

A NEW WAY
WITH CRIME

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Preface by
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PREFACE

THE very considerable improvement of an administrative character which has recently taken place in some of our prisons—more especially during the last five years—is a practical admission that previously the system had in it much that was wrong. For it can scarcely be claimed that this tentative move in the direction of a more intelligent and humane treatment of criminals has been justified by any measurable improvement in human nature since the war. The reforms, such as they are, are not being applied to an improved and therefore a more hopeful clientele ; the material is substantially the same as it has been for the last twenty or thirty years. It is only the official mind that has become a little less criminal in its misuse of human nature ; and the neglected opportunities of a generation ago are being demonstrated by better results in this.

But the improvement, though marked in certain directions under the discretionary power given to local authority, has not yet been standardised into a new system ; much of it remains permissive instead of compulsory, and depends on a magisterial enlightenment which is only operative in streaks, “ fiat lux ” being at present by no means synonymous with “ fiat justitia.”

Nevertheless a movement has begun, and the movement is having results ; even in the official centre at Whitehall the outlook is beginning to change, and certain retirements from office, which took place a few years ago, are having a beneficent effect. But even where much is being attempted and something done, reform is hampered and limited by the fact that it is

trying to function within the walls of an old system which means something different—which means not primarily reform at all, but punishment. And if you set out systematically to put the one thing first, you cannot make the other your main result. If you mean first and foremost to punish, you are not going to get out of your criminals such good social results for the benefit of the community, on their release from restraint, as you will if you concentrate on reform.

This is not a crank notion, it is a scientific fact ; and the real issue in debate over our criminal code is whether we wish our treatment of criminals to be scientifically curative or maliciously sentimental. For it is a base piece of sentiment to wish punishment of a kind that does harm rather than some substitute for punishment that does good. Quite definitely the will to punish stands in the way of the will to reform ; society cannot have its glut of the one without abandoning or modifying its demand for the other.

At present such reformative effort as is taking place within our prisons is still based on wrong premises ; it is using the old system with ameliorative features added, and until the premises are abandoned the reform cannot be thorough. It is literally the premises, in both meanings of the word, which need to be altered. Our prisons are wrongly designed because they have been designed to a wrong end ; they stand for punishment, not for cure.

If, then, the scientific case for reform has become so demonstrably strong, what stands in the way ? Two things mainly—the one material, the other spiritual. A thorough reform of our prison system, though it would be economic and even remunerative in the long run, is going—to begin with—to cost money. And you cannot get the community to spend money largely and wisely unless it has developed a large and wise interest in the spending of it—

unless it sees that its interest does actually lie there. At the present moment the best prison we have in this country is that at Camp Hill, in the Isle of Wight, for "hardened criminals" under the Preventive Detention system. And that prison is in danger because we have not "hardened criminals" enough to fill it, so that the cost of its upkeep is disproportionate to its use. Except for lack of numbers—which should hardly be regarded as a fault!—Camp Hill has been abundantly justified by its results. How much more might not results justify an extension of "P.D." treatment to unhardened criminals throughout the country? It would still be only a "half-way house"; there is no reason to think that the results would not be equally good. But it would cost money.

And this brings me to the second obstacle that stands in the way—the spiritual one: the community lacks the necessary interest for the large expenditure required, because it lacks the sense of responsibility for the problem which awaits solution. And it lacks the sense of responsibility because it has been trained into a self-righteous separation—a moral class-distinction of the criminal from the non-criminal section of society.

Just as the self-righteousness of nations is a standing impediment to the abolition of war, so is the self-righteousness of society to penal reform. In each case there is a systematic refusal of nation or of society to take to itself any share in the responsibility for having brought war or crime into being; and from this refusal to admit a true share of responsibility, injustice is certain to result. It is impossible to have a just penal system which blinks the fact that society—augustly represented by its judges and magistrates—has very largely produced its own criminals; and every court of law which, by its high ritual and ceremony, conceals that fact and substi-

tutes the fiction of a blameless and outraged society administering justice on men in whose guilt it has no share, is stamped with a lie.

This is not to say that there is never such a thing as a criminal, brutal, base, or mean, who is mainly if not entirely responsible for the crime of which he stands charged ; but it is to say that the shared responsibility between society and the criminal varies through all degrees, and that we have stereotyped our formula of justice upon the false assumption that the criminal and not society is always to blame.

There have been occasions when a judge has honestly and bravely stated the case against society in his official capacity, and has given judgment accordingly. There is the famous instance of the judge who by his outspokenness, followed by a sentence of one day's imprisonment on a man found guilty of bigamy, caused an alteration of the law to make divorce a possibility for poor as well as rich ; but such instances are rare, and belong too much to the past. The refusal of juries to convict for offences involving capital punishment brought society (and incidentally a very reluctant bench of judges) to throw over a penal code whose blind and stupid severities stood comparable to the atrocities perpetrated in war.

It was the self-righteousness of society which had made such things possible in the past ; and now, when the scientific study of human nature has so greatly advanced, it is self-righteousness still which keeps society blind to the maltreatment of human nature which goes on behind prison walls.

The criminal is one who suffers from a defective sense of citizenship—a defect which we all share ; it is merely a matter of degree. It has been produced, or has been encouraged, in a society whose sense of citizenship is also defective or incomplete ; for until society stands for commonwealth and brotherhood,

our individual citizenship is likely to be as defective as the social order in which it finds expression. The criminal, therefore, only expresses in a fuller degree, more representatively, and with a stronger focus of illicit action against its weak places, the defects of our social system; and we, taking hold of this deficient who is partly our own making, thrust him out of one defective social system into another still more deficient in the principles and incentives of good citizenship; and there, very effectively in fifty-five cases out of a hundred or thereabouts, we stereotype his defect into a habit, imposing on it such a rule of life that it becomes not merely an aberration from average decency of conduct, but a conformity to type; for prison can hardly by any chance develop a sense of citizenship—since from prison the sense of citizenship is not merely absent but systematically ruled out. Even kindness and friendship are forbidden, which is, in a damned nutshell, about the best example of “the sin against the Holy Ghost” which I know. And until we make our prisons a training ground for citizenship—making the repair and mending of lives the be-all and end-all of the system—our prisons, like the society which has brought them into being, will themselves be mentally defective.

I was confident, even before reading the pages which follow, that Mr. Fenner Brockway would make this point of view prominent. His previous work, “English Prisons To-day,” done in collaboration with Mr. Stephen Hobhouse, is a book which, though unofficial, has helped to make history. Many of the changes there advocated have been brought about or are upon the way. But the really fundamental work has yet to be done; and this can hardly be hoped for in full measure, till it has a live public opinion behind it. Already the active opposition is small, it has diminished and will continue to do so.

For this "New Way with Crime" which Mr. Fenner Brockway advocates, is the way toward which expert opinion is steadily tending. It is not the cranks but the scientists, the practical sociologists, who are demanding a fundamental change from the old system. It is not theory, it is practice which is proving that the new axioms are right and the old axioms wrong. One can point to a pretty extensive breakdown in the reaction of criminals to our present system of penology; but in no case have better results failed to follow where the arriving science has been intelligently applied. In this book it is intelligently and moderately stated; and in stressing the overwhelming importance of the treatment of the juvenile offenders, it not only starts its reform proposals at what is obviously the right end, but makes its appeal on ground where public opinion is probably less hardened and less indifferent—and therefore more readily open to conviction—than in the case of the "confirmed criminal"—confirmed by the laying-on of so many hands that it is difficult to say what section of society has not had some part in it.

LAURENCE HOUSMAN.

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PART I

GENERAL PRINCIPLES

A NEW WAY WITH CRIME

PART I—GENERAL PRINCIPLES

CHAPTER I—SOCIETY AND THE CRIMINAL

A JUST society would fulfil two tests in respect to crime. First, all citizens would be given a fair opportunity to refrain from criminal conduct ; and second, the criminal code would reflect anti-social conduct. Our present society does not meet either of these tests.

POVERTY AS THE CAUSE OF CRIME

That all citizens do not have a fair opportunity to refrain from criminal conduct must be evident to everyone with a knowledge of existing social conditions. It is poverty which crowds the courts and which creates the prison population. An analysis of the occupations of those who go to prison shows that 60 per cent. are of the unskilled or semi-skilled labouring class, and that 80 per cent. are manual workers—that is, the lowest paid section of the community.

The Prison Commissioners have again and again emphasised how closely related crime and poverty are. In each of their annual reports since the post-war trade depression began, they have pointed out the effect of unemployment in the growth of the

prison population. In their 1922-23 report,¹ for instance, they say :

“ As last year, the increase in the total number of receptions into prison under sentence is largely due to the unemployment consequent on trade depression. No doubt this increase would be greater than it is were it not for the unemployment benefit. But, in spite of that, it is probably right to say that unemployment is one of the chief contributory factors to the prison population of to-day ; and further, that its effect is cumulative, that is to say, a man becomes gradually demoralised by prolonged idleness and is more likely to drift into prison, either through debt or through committing some offence, after two years' unemployment, than he is after one.”

The fact that 40 per cent. of the offences which lead to imprisonment are against property suggests in itself that an unsatisfactory distribution of material wealth is an important cause of crime.

There are certain types of offence which one would expect to increase in periods of special poverty. Indebtedness is one. How marked is the effect of prolonged poverty is indicated in the following figures of debtors imprisoned from 1918 (prior to the trade depression) to 1926 :—

1918-19	.	.	.	.	.	.	1,830
1919-20	.	.	.	.	.	.	2,819
1920-21	.	.	.	.	.	.	5,204
1921-22	.	.	.	.	.	.	9,267
1922-23	.	.	.	.	.	.	12,995
1923-24	.	.	.	.	.	.	11,638
1924-25	.	.	.	.	.	.	10,858
1925-26	.	.	.	.	.	.	11,610.

The Prison Commissioners report that unemployment “ is a large, if not the largest factor ” in causing this increase.²

But poverty and unemployment not only lead to an increase in the number of debtors ; investigation

¹ P. 6.

² Report, 1922-23, p. 7.

shows that bad social conditions aggravate crime in almost every respect. Dr. Devon, of the Scottish Prison Commissioners, has expressed his considered view in these definite terms :—

“ My personal view is that poverty and destitution are at the root of most offences against the law. Everybody can see that a man may be tempted to steal if he is destitute, but those who have never felt the pinch of poverty, combined with the absence of friendly aid, can hardly imagine how men are embittered and goaded into acts of brutality ; how they are tempted to seize desperately on every chance of even momentary forgetfulness of their fate ; how continually they have to dodge rules and laws that never incommode their more fortunate neighbours ; how hopeless they become and how broken in spirit ; how easy it is for them to drift into courses condemned by those whose life is brighter and whose opportunities are greater.” ¹

In these words Dr. Devon reveals the chief causes of crime with an insight which all with a knowledge of social conditions and a capacity for sympathetic imagination will recognise to be true.

Temperance reformers sometimes argue that the over-drinking of intoxicants is the chief cause of crime, and no one would wish to deny that drink has a very close relation to law-breaking. The fact should not be overlooked, however, that over-drinking is often the outcome of unsatisfactory social conditions. Bad housing, monotony of work, inadequate education, the absence of opportunities for social enjoyment, and excessive and attractive opportunities for drink are responsible for more drunkenness than any inherent faults in individual character. House the population well, make work interesting and worth while, seek to develop the mental powers that are latent, give opportunities for healthy enjoyment, provide attractive alternatives

¹ “ Proceedings of the Crime and Inebriety Section of the National Conference on the Prevention of Destitution,” 1912, p. 21.

to the public-houses which are now the most accessible social centres in most poverty-stricken districts, and drunkenness would cease to be a serious factor in the causation of crime.¹

When we come to consider the position of the discharged prisoner we shall find that social conditions are a very important factor in causing a continuance in the life of crime. In a society where thousands of men with an honest record find it difficult to obtain employment and a means of livelihood, the difficulties before those who have a prison record are almost insuperable. With little chance of earning an honest living there is practically no alternative to persistence in crime, and the difficulty of living honestly soon develops in many cases to an absence of desire to do so. "If this is how society treats me," the ex-prisoner is apt to say, "I will set myself to get my own back on society."

It is sometimes urged that poverty itself is due to individual failings and that, consequently, crime due to poverty is an individual responsibility. That faults of character cause individuals to sink in the struggle for existence is, of course, true; but no sociologist would say that they are the main cause of poverty. It is undeniable that thousands of children are born and brought up under conditions which give them no chance in life. The boys and girls who cannot find work to do when they leave school are not responsible for their wasted lives; they are the

¹ It is true that there is over-drinking among the rich, but this too is often due to artificial conditions and an unhealthy social life. Incidentally, it may be pointed out that drunkenness is another instance of the effect upon law-breaking of unequal economic conditions. The rich man need never be drunk in the streets or public places. A taxi-cab can always take him home. And should he by chance happen to lay himself open to arrest, he can easily pay the fine and avoid imprisonment.

victims of bad economic arrangements for which society as a whole is responsible. The low standard of wages, the bad and over-crowded housing conditions, the long hours spent in monotonous and mind-deteriorating work, the squalor and the general insecurity of existence to which hundreds of thousands are condemned—these are due to social, not individual, failures. Every trade depression, every slump in a particular industry, thrusts thousands into a condition of destitution. They become destitute, not as a result of bad character, but owing to the failure of society to organise its economic life scientifically. It is this poverty and destitution, with its accompanying limitations, which Dr. Devon recognises to be “at the root of most offences against the law.”

SOCIETY AS THE SUPER-CRIMINAL

It is equally clear that present conditions do not fulfil the second condition of a just society. The unemployed man who steals food for his family, or the poorly-paid man who steals money for his ailing wife, is regarded as a criminal and is frequently imprisoned. The profiteer who grows rich, whilst he underpays his workers or overcharges the public, is often regarded as a pillar of society, and frequently becomes a magistrate or peer.

Morally, any individual capable of work who receives from the community without giving is guilty of anti-social conduct—in plain words, he is guilty of theft, yet present society permits many who render no service to the nation to receive the greatest share of the nation's wealth. Of the total estimated annual income of £4,230,000,000, no less

than £1,200,000,000 (or nearly one-quarter) is "unearned," that is, it is received without any service being given in return. We do not suggest that all those who live on "unearned" income are unentitled to receive from the community. The aged, the disabled and the sick should be honourably maintained by the community and the service of the widow in caring for her children should be recognised. But an able-bodied and able-minded man or woman who is receiving without serving, who is taking from the pool of wealth without contributing to it, is morally a thief, however much he or she may be regarded as a gentleman or a lady. It is estimated that one-ninth of the population of Britain receives one-half of the national income. No one would suggest that they do one-half of the nation's work, yet they appropriate their half of the nation's income quite legally. Clearly our criminal code does not accurately reflect anti-social conduct.

This is more than a question of receiving wealth to which one is not entitled or of withholding wealth from those who are entitled to it. To pay less than a living wage is a crime against the person as well as a material crime. It means that the worker and his family do not receive sufficient to enable them to maintain a healthy physique and mentality. Semi-starvation is manslaughter by degrees. How can a miner, an engineer, or a textile worker give his wife and children sufficient to keep them from undernourishment on wages of 40s. and less a week?

It is not suggested that the individual employer is actuated by motives which are criminal. In some cases there may be inexcusable callousness; in others, an unawakened conscience. But, generally

speaking, it is not the individual employer who is to be blamed, but the community as a whole. The unequal distribution of wealth and the bad economic conditions which involve the deterioration of human life are the consequences of a system of civilisation which the public so far accepts. Society is organised on an unsocial basis. Before society has the right to condemn the criminal for unsocial acts it should set its own house in order.

Moreover, the extraction of unearned income from the community by the non-working rich is only an extreme expression of an anti-social motive which permeates the whole organisation of society. The class which secures luxury incomes without working for them is regarded as the supremely successful section of society. The aim of those who are engaged in the scramble for wealth is to get the most that can be got for doing the least that need be done. This anti-social motive runs through the community from top to bottom. The financier and investor want the highest interest obtainable. The manufacturer and retailer want the largest profit possible. The workman wants the biggest wage he can command. Society is split into sections, each fighting on its own behalf, with little thought for the community as a whole. The effect of the existing economic system is inevitably to encourage an anti-social psychology. Within such a social system, it is not surprising if certain individuals take the law into their own hands and extend to illegal limits the general rule of getting the better of everyone else.

M. Lassagne, the leader of the French school of criminologists, has said that "every society has the criminals which it deserves." A study of the history

of crime indicates that this is broadly true. Dr. Clara Meijer Weichmann, the Dutch authority, in her work "Crime, Punishment and Society," points out that, whilst there have always been individual cases of crime, *mass criminality* has been unknown during the greater part of history. It occurred in the closing centuries of the ancient world, when an economically insecure labouring class developed in addition to the slave class. It sprang up again in the closing stages of the Middle Ages, when a dispossessed and homeless class appeared. But the periods of history when there was general economic security do not show this mass criminality. It is an "historical" rather than an "eternal" category.

There are, of course, certain classes of crime which are more directly incited by economic insecurity and unjust social conditions than others. Pathological criminals and criminals of passion will, no doubt, be found in the most ideal society within our reach,¹ although the number of these would certainly be considerably lessened with the diminution of the evil conditions which now encourage the birth of degenerates and by the development of an education which disciplines emotion by reason. In addition, there will no doubt be certain individual crimes against property, in the form of theft or of unwillingness to perform adequate service, so long as selfishness or laziness continue, or until we reach that state of doubtful bliss when there is so much wealth that the community need not concern itself about such things. Anti-social conduct through carelessness will also no doubt persist. But, allow-

¹ Dr. Weichmann reminds us that William Morris, in his Utopian "News from Nowhere," depicts a murder in an outburst of passion.

ing for all these categories of crime, it cannot be doubted that with the removal of social injustice the greatest proportion of crime as we know it to-day would disappear.

These considerations lead us to the conclusion that the prison population are bearing as great a burden of social failure as of individual failure. Society is the super-criminal. Some who read these words will recollect the shock which was occasioned in the religious world some twenty years ago when a celebrated preacher urged that the thieves who were crucified on either side of Christ also bore the sins of the world. This is true of criminals in modern society. Our common responsibility for the conditions which encourage crime deprives us of any right to adopt an attitude either of moral superiority or of revenge towards criminals as a class. Our first concern must be to end the crime-producing conditions and, meantime, whilst protecting society from its own products, to seek to do all in our power to restore them to a socially useful existence.

CHAPTER II—TOWARDS A NEW PENAL THEORY

IN the preceding chapter we have reached two conclusions: (1) that crime is largely the result of poverty and the social system, for which the community, and not the particular individual, is responsible; and (2) that the existing criminal code does not justly reflect anti-social conduct.

If these are true, we must revise our whole theory of penal treatment. So long as social conditions are dominant in determining the extent and character of crime, there can be no case for vindictiveness against the individual criminal. Nor can a community claim to function as a moral judge whilst its system of law does not reflect moral conduct.

The theory of English law has no place for these considerations. In the words of Sir James F. Stephen, the author of "The History of Criminal Law in England," "the criminal law proceeds upon the principle that it is morally right to hate criminals, and it confirms and justifies that sentiment by inflicting upon criminals punishments which express it."¹ He picturesquely argues that criminal procedure may justly be regarded as being to resentment what marriage is to affection—the legal provision for an inevitable impulse of human nature. Such authorities as Bentham and Bishop Butler also take the view that revenge is one of the chief objects of legal punishment.

¹ "The History of Criminal Law in England," Vol. II., p. 81.

Few jurists, however, go so far as this. They evidently consider the instinct of revenge too crudely primitive to use as a justification of the penal system. But many come very near to endorsing revenge in defending what they term retribution. "The principle that punishment should be merely deterrent and reformatory is, I think, too purely utilitarian for current opinion," says Prof. Sidgwick. "That opinion seems still to incline to the view that a man who has done wrong *ought* to suffer pain in return, even if no benefit result to him or to others from the pain." ¹ "The object of punishment," remarks Sir Edward Fry concisely, "is to adjust the suffering to the sin." ²

The main justification for the penal system urged by modern jurists is deterrence. Prof. Kenny points out in his "Outlines of Criminal Law" that to the most generally accepted writers—as, for instance, Beccaria, Blackstone, Romilly, Paley, Feuerbach—the hope of preventing the repetition of the offence "is not only a main object, but the sole permissible object of inflicting a criminal punishment." ³

It is difficult, however, to state what the official theory of legal punishment is, because, as expounded by different authorities, it is hopelessly inconsistent and incoherent. The penal system, like most human institutions, has developed from instincts and circumstances rather than from principles. Jurists differ as to principles and no official body has spoken authoritatively.

But if the penal code as a whole has received no

¹ "Methods of Ethics," p. 280. Prof. Sidgwick is probably interpreting public opinion rather than expressing his own.

² "Studies by the Way," pp. 40-71.

³ P. 30.

official apologia, the Prison Commissioners have made very thorough attempts to expound theories of prison treatment. Since these theories come from an official body and raise all the important issues discussed by the jurists, it is worth while to consider them in some detail.

It should be acknowledged at once that in recent years there has been a noteworthy development in the attitude of the Prison Commissioners. Faced by its failure, the Commissioners have, since 1920, thrown over the theory upon which the modern prison system was built, and are now seeking both a new system and a new theory. At present, however, the old prison system remains in essentials, and, before considering alternatives to it, it is desirable that we should understand the theory behind it.

Three principles were advanced in this theory, expressed in the terms Retribution, Deterrence, and Reform. The principle of Retribution arises from the old Jewish conception "an eye for an eye, a tooth for a tooth." Deterrence has two aspects—the deterrence of the prisoner from further crime by the experience he has undergone, and the deterrence of the potential criminal from committing crime by the fear of the consequences of his action. Reformation is defined as "the effort to restore a man to society as a better and wiser man and a good citizen."¹

Under Sir E. Ruggles-Brise's long chairmanship of the Prison Commissioners—it lasted from 1895-1920—an attempt was made to combine all these principles in the supreme object—Punishment. "The

¹ Prison Commissioners' Report, 1912-13, p. 23.

purpose for which prisons exist," the Commissioners said, "is the due punishment of fully responsible persons." How they sought to balance the three factors of punishment they did not indicate, but they insisted that "the important thing is as to the order of precedence of the three attributes."¹ Unlike most jurists, the Commissioners placed Retribution before Deterrence. Reform only came third.

THE PRINCIPLE OF RETRIBUTION

The retributory principle is based on the idea that society should, as a matter of moral justice, make the criminal suffer in proportion to the enormity of his crime. It was clearly stated by Sir E. Ruggles-Brise : "The making of the relationship of sin to suffering as real, and as actual, and as exact as it is possible to be made."² This was advocated as a kind of moral "compensation for injury wrought."³ As we have seen, Sir Edward Fry, the [eminent jurist, used similar language : "The object of punishment is to adjust the suffering to the sin."

The first question which arises in considering this principle is the practical test : How can it be applied ? Can sin and suffering be standardised ?

It might be possible to prepare a tariff of crime, beginning with some technical breach of the regulations and ending with murder, and to attach punishments of increasing severity. But would that satisfy moral justice ? Can "sin" be judged by the actual deed alone ? Must not all the circumstances be considered ? For instance, would it be moral justice

¹ Prison Commissioners' Report, 1912-13, pp. 22-23.

² Report on the Sixth International Prison Congress, p. III.

³ *Ibid.*, p. 116.

to punish a man who steals for the sake of an ailing wife as severely as the man who steals for personal gain? This is an extreme contrast; but every deed arises from a complex series of incidents and influences which must be weighed before it can be judged rightly.

How can a judge possibly estimate the factors which have gone to the committal of any crime? The criminal's upbringing, his material and social circumstances, his personal companionships, his physical and mental conditions, his weakness or strength of will, the accidental incidents which are so decisive in determining human actions, the degree of temptation—how can even the wisest of us measure these various elements? It requires infinite understanding and a virtue that is superhuman. Who dare attempt it?

Similarly, how can suffering be standardised? Even if it were possible to judge crime according to a moral scale, no equivalent scale of punishments could be prepared in terms of suffering. A sentence of imprisonment is child's play to one man, to another it is torture. There are not only external conditions to consider, such as family circumstances and future prospects—and these may react more upon the mental state of the prisoner than the actual conditions of his punishment—but one type of prisoner is philosophic or adaptable to circumstances, another type is sensitive and suffers from the conflict of temperament and environment. These things cannot be weighed or measured. Retribution clearly cannot be accepted as a working principle, for the simple reason that it is beyond man's capacity to work it.

THE PRINCIPLE OF DETERRENCE

We pass to the principle of deterrence. If this principle be sound, prison treatment should obviously be as painful as possible ; the greater the suffering imposed, the more likely the prisoner to seek to avoid it in future, and the potential prisoner to avoid it altogether. Physical torture, bread and water diet, and solitary confinement would seem to be the ideal treatment. In practice, considerations of humanity and health have, of course, prevented the logical application of the principle.

There is no exact practical test we can apply to this principle—it is impossible to say with certainty whether deeds of crime have been lessened by the experience or fear of imprisonment. There are, however, certain relevant facts to be considered, and certain conclusions to be drawn from psychology.

When we ask whether imprisonment deters from further crime, we are immediately faced by the facts of Recidivism. The figures of repeated convictions do not suggest that imprisonment deters. The most recent returns (1926) show that 64 per cent. of the male prisoners and 87 per cent. of the female prisoners have been previously convicted. Nearly 7 per cent. of the male prisoners and 32 per cent. of the female prisoners have been previously convicted more than *twenty* times.¹ It may be argued, of course, that other influences cause these reconvictions, despite the deterrent effects of imprisonment ; but it is at least evident that the deterrent effect is not strong enough to overcome such influences.

Investigation shows that imprisonment affects

¹ The high percentage of women recidivists is due to repeated conviction for offences connected with prostitution.

those who undergo it in two ways, according to their type.¹ One class of prisoner adapts himself more or less rapidly to the prison system. The other type remains in disharmony with it. There is, of course, no hard and fast division between these types; they merge into each other. But the two experiences cover all prisoners to a greater or less degree.

In the case of prisoners who completely adapt themselves to the system, the deterrent effect is obviously absent. Such prisoners sink to the low standard of existence which imprisonment involves and find little hardship in it. They become moulded to the prison pattern. These cases may be comparatively rare, but they indicate a common tendency. Human nature has the habit of conforming to environmental circumstances.

This process of adaptation naturally becomes more complete the longer the term of imprisonment; but experience proves that even short sentences fail to deter. The Prison Commissioners have again and again protested that short sentences are useless and that the deterring effect is less powerful than the opposite effect of acquiring the prison "taint."

When we turn to the "sensitive" type of prisoner—the prisoner whose temperament remains in conflict with the prison *régime*—it would be difficult to deny that the experience does not sometimes cause a man to refrain from actions likely to lead to further imprisonment. But, even in cases of this type, it is clear that the frequent effect of imprison-

¹ See "English Prisons To-day," the Report of the Prison System Enquiry Committee, 1921, pp. 485-87.

ment is to create an attitude of mind which leads to persistence in wrong-doing. It is the experience of every prison official that the man who rebels against prison treatment tends to rebel also against the community which has imposed the treatment upon him. He develops what has been described as the "anti-social grudge." Perhaps the best illustration of this can be given by a few extracts from letters of convicts in Dartmoor Prison, reproduced in the Report of the Prison System Enquiry Committee : ¹

" I should like to see anyone make me tender. Why, this life has taken all the feeling out of me. I shall have neither compassion or pity for anyone in the future if they get in my way." (*During fourth year of third sentence*)

" The only thing that prison has done for me is to sow the seeds of revenge against a society that tolerates it." (*During second year of third sentence.*)

" I won't be sent here any more for being on a roof ; I will get inside next time." (*During second year of first sentence.*)

" I assure you it is my intention to be wicked." (*During second year of third sentence*)

The men who wrote these letters—typical of a considerable proportion of prisoners—have certainly not been deterred from a life of crime by their experience of imprisonment.

The prison régime also fails to deter by unfitting prisoners for ordinary existence. Self-reliance and initiative are lost, personality is suppressed, memory deteriorates, the power to take one's part in the struggle for existence becomes less. This applies to all prisoners, whether they adapt themselves to conditions of imprisonment or not, but it is more particularly true of those who do not resist the environment in which they are placed. Treatment

¹ " English Prisons To-day," pp. 522-26.

which has the effect of making prisoners less capable of living in the outside world inevitably tends to encourage them to return.

In the case of potential prisoners, one can only express the opinion that, when deterrence operates, it is due not so much to the experience of imprisonment as to the disgrace of being imprisoned. It is very doubtful, however, whether such deterrence does actually operate to any marked degree. Do the facts of life suggest that any considerable number of people refrain from stealing or drunkenness or violence because they fear the consequences? Clearly, crimes of intemperance and passion—a high percentage of the total—are not likely to be affected in this way, and, if potential criminals think of the consequences at all, they will more probably weigh the chances of discovery, and seek a favourable opportunity, than consider the kind of treatment they will receive if caught.

We must also ask whether deterrence, even when it operates, is a healthy influence for the individual or society. In the long run, it is not by acts of illegality that the standard of a community should be measured, but by the character of the individuals who compose it. Deterrence does not improve character. Fear of the consequences may prevent the commission of a particular act, but, if the attitude of mind is not changed, the repression of anti-social conduct in one direction will only result in its expression in another direction. A thief who does not steal through fear of imprisonment will find alternative means of defrauding the community. Society will really benefit only when he ceases to desire to steal. Moreover, the community which relies on the

method of fear degrades itself. It is the method of terrorism, the weapon of the bully.

THE PRINCIPLE OF REFORM

Lastly, the principle of Reform. The value of this principle entirely depends upon the spirit behind it. If it means that every effort is concentrated with sympathetic understanding upon the rehabilitation of the criminal and the securing of good opportunities for him in the future, it is good. If, on the other hand, it is applied in a spirit of moral superiority, and is appended as a kind of after-thought to the principles of retribution and deterrence, it can be of little worth.

The punitive and deterrent sides of prison treatment have, in fact, almost completely destroyed the effects of the few influences which are intended to be reformatory. Approaching the problem from the motive of punishment, the authorities set out to evolve a uniform system which would inflict the necessary suffering upon all the variety of offenders placed in their charge. They found it in a *régime* of cellular confinement, deprivation of social intercourse, and subjection to rigid discipline. Only after the motives of punishment and deterrence had been adequately expressed was the motive of reform allowed to operate. Failure has been inevitable. Character cannot grow in an atmosphere of suppression.

The Prison Commissioners have themselves admitted from time to time that imprisonment has no reformatory effect upon the greater part of the prison population—the professional or habitual

criminal,¹ the young prisoner under twenty-one,² the short-sentence prisoner,³ the vagrant,⁴ the inebriate,⁵ and the feeble-minded;⁶ that is to say, practically every category except adult first offenders of the "accidental" type. And there is no evidence that even these have been "reformed" by the treatment which they have undergone. It is estimated that one-third of the first offenders return to prison, and, if many of the "accidental" type do not return, that is to be expected. They are not of criminal tendencies, and it is a matter of chance that they ever get into prison.

A moment's thought shows the stupidity of the attempt to combine punishment, deterrence, and reform. "If you are to punish a man retributively, you must," Mr. Bernard Shaw points out, "injure him. If you are to reform him, you must improve him. And men are not improved by injuries." Mr. Shaw illustrates his argument thus:—

"To propose to punish and reform people by the same operation is exactly as if you were to take a man suffering from pneumonia, and attempt to combine punitive and curative treatment. Arguing that a man with pneumonia is a danger to the community, and that he need not catch it if he takes proper care of his health, you resolve that he shall have a severe lesson, both to punish him for his negligence and pulmonary weakness and to deter others from following his example. You therefore strip him naked, and in that condition stand him all night in the snow. But as you admit the duty of restoring him to health if possible, and discharging him with sound lungs, you engage a doctor to superintend the punishment and administer cough lozenges, made as unpleasant to the taste as possible so as not to pamper the culprit. A Board of Commissioners ordering such

¹ Report of 1900 International Congress, p. 107.

² P.C. Report, 1906-7, p. 14.

³ Report on Washington Prison Congress, p. 37.

⁴ P.C. Report, 1909-10, p. 8.

⁵ P.C. Report, 1908-9., p. 26.

⁶ P.C. Report, 1912-13, p. 31.

treatment would prove thereby that either they were imbeciles or else they were hotly in earnest about punishing the patient, and not in the least earnest about curing him. When our Prison Commissioners pretend to combine punishment with moral reformation they are in the same dilemma." ¹

If we are to be sincere in the object of reform, the motives of punishment and deterrence must be entirely eliminated from our treatment of prisoners. One other motive alone is admissible—the duty of protecting society. All thought of moral judgment, all instincts of revenge, all reliance on the deterring effect of fear must be put aside. *We must dispassionately consider in each case two objects and two objects only—what is best for the individual and what is best for society.*

We should approach the problem of moral ill-health exactly as we approach the problem of physical or mental ill-health—first, we should seek to cure the criminal by personal treatment; second, we should seek to remove the social causes of crime by public preventive measures; and, third, we should, if necessary, isolate the criminal until he ceases to be dangerous to society. In a word, we must cease to treat crime emotionally as a sin and begin to treat it scientifically as a disease.

¹ Preface to "English Prisons under Local Government" (Sidney and Beatrice Webb), pp. xiv-xv.

PART II

THE JUVENILE OFFENDER

PART II—THE JUVENILE OFFENDER

CHAPTER III—THE YOUNG OFFENDER AND HIS CRIMES

WE start our detailed consideration of crime with the Juvenile Offender. The curative treatment of young criminals is important, not only for the sake of the children themselves, but as a means of stopping the stream from which most habitual offenders flow. The late Dr. Goring, in his classic inquiry, "The English Convict,"¹ provided the following significant table of the ages on first conviction of 2,204 habitual offenders :—

Age.	Percentage of First Convictions.	Age.	Percentage of First Convictions.
5	·8	40	2·6
10	13·5	45	1·5
15	39·0	50	0·9
20	19·8	55	0·5
25	10·8	60	0·3
30	7·0	65	0·1
35	3·2		

It will be seen that half (53·3 per cent.) of these habitual offenders were first convicted before the age of sixteen. This fact proves at once the failure of past methods of dealing with Juvenile Offenders and the possibility of halving the volume of habitual

¹ P. 201.

crime if successful curative treatment can be applied to the young.

Before we consider the question of treatment, it is desirable to understand the nature of the human material with which we are dealing. Who are these Juvenile Offenders? What are they like?

First, a simple fact: The age of Juvenile Offenders is between seven and sixteen (sometimes those between fourteen and sixteen are distinguished as "young offenders"). Before seven, the parent and not the child is held responsible for an offence. After sixteen, the juvenile develops into a "juvenile-adult."

INCURABLE MORAL DEFECTIVES?

There is a school of criminologists which regards the greater part of Juvenile Offenders as inherently defective, and therefore incurable. Dr. Henry Maudsley argues that many, perhaps most, young criminals are born defective morally.¹ In other respects they may be normal children, and even clever, but they are "morally blind just as other children are physically blind."² Dr. Tredgold, though he afterwards revised his theories, expressed the attitude of this school when he said that the condition of moral deficiency is inborn, and this causes those who suffer from it to be "absolutely irreformable."³

Dr. Cyril Burt has made an exhaustive analysis of 200 cases of Juvenile Offenders, with a view to discovering how far the causes of their delinquency are hereditary; that is, inborn. He found that there were only 11 per cent. whose relatives had been

¹ "Responsibility in Mental Diseases," pp. 31-65.

² "Types of Mental Defectives" by M. W. Barr and E. F. Maloney, p. 74.

³ "Mental Deficiency," p. 326.

sentenced for crime, and only 19 per cent. whose relatives, whether sentenced or not, were known to have committed some gross offence. As many as four-fifths of the children had no history of crime among their kindred. Other inquiries have shown a higher percentage, but the figures of the most careful investigators, after analysing representative groups of delinquents, generally range between 10 and 25 per cent.¹

Dr. Burt sums up as follows :—

“ The child, after all, may be suffering quite as much from the vice or the bad management brought into the home by a dull or an immoral parent, as from any dullness or immorality that he himself might have inherited. In point of fact, small evidence, as a rule, is procurable to demonstrate beyond dispute that the criminal proclivities of the parent have been handed down to the child by true biological transmission. Other causes, less hypothetical in character, more obvious in their mode of operation, may very frequently be traced, and their removal is followed, in not a few examples, by a reform as immediate as it is complete. Many of these provocative factors—bad companions, bad neighbourhoods, bad discipline, and a bad example at home—are a by-product of the moral laxity of the parents themselves, the degeneracy of the family thus operating indirectly through the resulting environment, instead of directly by its influence on the germ-cells. As in physical disorders, so in moral—contagion is too often mistaken for heredity. The only instances where the vices of the child stand in a direct and apparently hereditary relation to the vices of the parent, belong to specifically limited types, such as sex-delinquency (by far the most frequent), wandering, violent temper, and perhaps impulsive theft. . . . But even here the instinct is not itself inevitably a criminal one; and, once it is afforded some permissible outlet—through marriage, congenial work, or wholesome recreation—its energies can be diverted from illicit adventures, and directed into safe and legitimate paths.”²

We can therefore begin our consideration of curative treatment hopefully. There is nothing incur-

¹ “ The Young Delinquent,” p. 52.

² *Ibid.*, pp. 56–58.

ably bad about the human material with which we are concerned.

THE POVERTY OF THEIR HOMES

A second general characteristic of Juvenile Offenders is the poverty of their families. The procession of children who go before the Juvenile Courts is mostly composed of those from poor homes, and the population of the Industrial and Reformatory Schools is almost exclusively drawn from the poorest classes. This is partly due to the fact that delinquency among the children of the comfortable and richer classes does not come so prominently to the notice of the authorities and is dealt with in other ways, but there can be no doubt that poverty itself, and the restrictions it entails, are a big factor in causing delinquency. Mr. Clarke Hall, the enlightened magistrate of the Shoreditch Juvenile Court, remarking that the juvenile delinquents who come before the Courts are almost wholly from the poorer classes, says :—

“ When one remembers the hard lot of the children in the poorer parts of our great towns ; the constant temptation to which they are subjected ; the almost complete absence of supervision and control over them during the long evenings when they are away from school ; the want of amusement, of healthy exercise, of playgrounds, of all intelligent interests ; the often wretched conditions of their homes, the confined space, the crowded and insanitary conditions of life ; the evil examples around them, the foul language, the brutal drunkenness, the savage blows which they daily hear and see—one is astonished at the many good qualities rather than the bad, and wonders less at the number contaminated than at the number who escape contamination.” ¹

Dr. Cyril's Burt's thorough investigation showed that “ over one-half of the total amount of juvenile

¹ “ Children's Courts,” p. 43.

delinquency is found in homes that are poor or very poor," and he comments that the figures show very trenchantly that poverty gives an added spur to "dishonesty and wrong."¹ One child in six was actually in want of the common necessities of life. Of these necessitous offenders by far the majority were reported for theft. In households below the Seeböhm Rowntree poverty line, as many as 81 per cent. of the offences belonged to this category; in households above the poverty line, only 63 per cent.²

A careful geographical survey of juvenile delinquency showed that "it is in the poor, overcrowded insanitary households where families are huge, where the children are dependent solely on the State for their education, and where the parents are largely dependent on charity and relief for their own maintenance, that juvenile delinquency is most rife."³ As many as 21 per cent. of Dr. Burt's cases lived in overcrowded tenements, with more than two adults (or four children under ten) in one room. He emphasises the effect of overcrowding, not only in preventing decent privacy, but in creating ceaseless friction and recurrent irritation, "which, even among families the most patient and forbearing, can hardly be prevented, while a number of individuals, differing widely in wants and in pursuits according to their age and station, are kept jostling, every day and all day long, in the closest personal proximity, within the four narrow walls of an over-packed apartment."⁴

¹ "The Young Delinquent," pp. 69 and 70.

² *Ibid.*, p. 67.

³ *Ibid.*, p. 78.

⁴ *Ibid.*, p. 89.

Dr. Burt also stresses the absence of opportunity for recreation for the children :—

“ In the poorest (dwellings), the same stuffy garret serves as parlour, kitchen and bedchamber in one ; and, within this sole and single apartment, the tiny children have to play, and the older children to welcome their friends, or else find a place of resort out of doors.”¹

There are no gardens, and the children inevitably make the street their playground, “ and it is in the street that the chief opportunities present themselves for the petty misdemeanours of the young.” Dr. Burt’s geographical survey showed that “ in almost every quarter of London the incidence of crime is high in areas most remote from open spaces, where there are no parks, no playing fields, no recreation grounds.”² A similar correspondence between the absence of open spaces and the presence of juvenile crime has been noted in a survey carried out at Liverpool by Mr. F. J. Marquis, formerly Warden of the Liverpool University Settlement.

Despite all these facts, Dr. Burt estimates that in only 3 per cent. of the male delinquents, and not one of the female, could poverty be called the *prime* contributory factor. We are very doubtful about the basis of his calculation in this respect, but, in any case, the probability is that many of the other prime factors he cites—defective parental discipline, vicious homes, defective family relationships, bad companionships, and faulty physique, intellect and emotions—have their roots in poverty. At the same time, it is not to be expected that poverty will be as important a factor in the causation of crime among juveniles as among adults. The effects of poverty

¹ “ The Young Delinquent,” p. 90.

² *Ibid.*, p. 156.

are accumulative, and the children are not so directly influenced as adults by the problem of how to make ends meet (if there is food in the house, they are likely to get it), or by the temptations and deteriorating effects of unemployment. Nevertheless, there is not the least doubt that poverty is the most productive breeding-ground of juvenile, as well as of adult, crime. Dr. Hamblin Smith, the psychologist at Birmingham Prison, sums up the matter thus :—

“ Juvenile delinquency often begins with the attempt to play in the streets, contrary to town regulations. This play may be a nuisance to the community, but it is nothing less than the very life of the child. It is not merely desirable, it is an absolute obligation on the community, to see that every child has the opportunity of developing amid surroundings which are as perfect as they can be made. This is part of what may be termed the parental obligation of the community. The parental obligation has far too often been adopted only when a boy or girl has broken the law. It should have been adopted sooner. We may have to pass sentence, but we should also try to eliminate from our community life those elements which tend to cause delinquency in the normal boy. Poverty, overwork, and lack of opportunity for normal modes of expression, are all potent factors in the production of juvenile delinquency. Enforced unemployment may also act in this direction. Unsocial instincts are sometimes the result of lack of opportunity for social service.”¹

ENVIRONMENTAL AND PERSONAL FACTORS

Among other characteristics of Juvenile Offenders and their conditions which Dr. Burt's inquiry revealed, were the following :—

Environmental Conditions.

Vicious homes, 26 per cent.

Defective family relationships, 58 per cent.

Defective parental discipline, 61 per cent.

¹ “ The Psychology of the Criminal,” pp. 164-65.

Physical Conditions.

- Undersized physically, 2.7 per cent.
- Over-developed physically, 2.7 per cent.
- Malnutrition, 14.7 per cent.
- Over-developed sexually, 6.8 per cent.
- Bodily weakness and ill-health, 70 per cent.

Mental Conditions.

- Mental deficiency, 4.1 per cent.
- Natural dullness, 25.7 per cent.
- Educational backwardness, 56.8 per cent.

Emotional Conditions.

- Temperamentally unstable, 34 per cent.
- Temperamentally defective, 9.6 per cent.
- Repressed complexes, 57.4 per cent.
- Neurotic tendencies, 15 per cent.

There are certain points in connection with these characteristics which should be specially noted. Dr. Burt regards home conditions as the chief environmental factor in the causation of juvenile delinquency. "The commonest and the most disastrous conditions are those that centre about the family life,"¹ he says. It will be seen that the percentage of physical defects among juvenile delinquents is very high, but it must be remembered that all children from poor areas have abnormal ill-health. Dr. Burt found that defective physical conditions among delinquents are, roughly speaking, only one and a quarter times more frequent than among non-delinquents from the same schools and streets. The mental standard of delinquent children, however is markedly inferior. The proportion of mental deficient (small though the number is) is four times greater than among non-delinquent children of the same class, of naturally dull children it is between two and three times greater, and of the educationally

¹ "The Young Delinquent," p. 187.

backward nearly four times greater. Similarly, emotional weaknesses are strikingly more frequent. Temperamental deficiency is found nearly ten times as frequently among delinquents as among non-delinquents, and temperamental instability more than three times; whilst repressed complexes are three times as frequent. These indications of the mental and emotional weaknesses of Juvenile Offenders prove how essential is psychological examination followed by scientific curative treatment.

NUMBER AND CHARACTER OF OFFENCES

The number of offenders who appear before the Juvenile Courts is about 30,000 a year. During the war the figure reached over 50,000; between 1921 and 1924 it averaged 29,925.

The offences for the years 1921-24 may be summarised as follows:—

Offences.	Per Cent.
Malicious (against persons or animals)	0·85
Malicious (against property)	16·96
Sexual	0·53
Acquisitive	42·06
Vagrancy	0·59
Offences against Regulations	29·7
Truancy	0·3
Other offences	8·65

It will be seen that nearly half of the offences are acquisitive. Most of these are larceny, many of them quite petty thefts. Next come offences against regulations, such as playing football in the streets, etc., with nearly a third, and malicious offences against property, more than one-sixth. The sexual offences consist of indecent assaults and indecent exposure. Until 1921 there were occasional charges of prostitution, but there was none in the years

1921-24. Vagrancy covers offences against the Poor Law, begging, and sleeping out. Other offences include the small item of drunkenness, of which there were four cases in 1921 and one case in 1923.

THE TREATMENT GIVEN

The treatment which these offenders received in the years 1921-24 is shown in the following table :—

		Treatment.	Per Cent.
Without Conviction	{	Charge withdrawn or dismissed .	12.56
		Dismissed with caution	21.85
		Recognisances	7.44
		Probation	16.86
		Industrial School	1.64
		Custody of relative, etc. . . .	0.06
		Institution for defectives . . .	0.1
After Conviction	{	Imprisonment	0.01
		Police cells	0.01
		Reformatory School	1.95
		Whipping	1.88
		Fine	35.26
		Recognisances	0.15
		Otherwise disposed of	0.21

It will be noticed that over one-third of the children are fined, that more than one-fifth are dismissed with a caution, and that one-sixth are placed on probation. No conviction is made of half the children, even when the charge is proved. With this broad survey in our minds, we can turn to the problem of the detailed treatment of the Juvenile Offender.

CHAPTER IV.—THE YOUNG OFFENDER IN COURT

ACCORDING to English law, a child above seven who commits an offence against the law is a criminal. It is true that he may be exempted from this category if he is considered incapable of knowing his act to be wrong, but this exception is generally held to apply only to children of obvious mental deficiency. The ordinary child who breaks the law is liable to arrest, trial and punishment as a responsible criminal.

The procedure laid down in the Regulations for the Juvenile Courts is the same in essentials as that of the Adult Courts. The trial takes place under the criminal law and the purpose is to impose punishment upon the guilty. "The child has offended against the law," write Mr. Bernard Flexner and Mr. Roger Baldwin,¹ "he is charged with a specific offence ; he is often required, as in the case of adults, to answer upon the calling of the case, ' guilty ' or ' not guilty ' ; he is frequently put upon oath and, if found guilty, the court imposes what it regards as a punishment."

America takes a more enlightened view. " The purpose of the proceeding here," state the same authorities, " is not punishment, but correction of conditions, care and protection of the child, and prevention of a recurrence through the constructive

¹ Their book, " Juvenile Courts and Probation," is quoted as authoritative in the Report of the Departmental Committee on the Treatment of Young Offenders, 1927, pp. 17 and 18.

work of the Court. Conservation of the child as a valuable asset of the community is the dominant note."

We shall not spend time in arguing the case between the English and American conceptions. Even if our general view of crime be not accepted *in toto*, it is difficult to believe that any reasonable person will defend the attachment of criminal responsibility to a child of seven, or ten, or twelve, or even to boys and girls in their 'teens. No one under twenty-one is considered sufficiently mature to participate in the election of the Parliament which makes the laws. It logically follows that no one under twenty-one should be considered of sufficient maturity to accept full responsibility for breaking the laws.

The Departmental Committee which reported in 1927 pointed out that "the age of seven was adopted hundreds of years ago, and the whole attitude of society towards offences committed by children has since been revolutionised."¹ This is a healthily vigorous statement, and our hopes are raised by the expression of opinion which follows that "the time has come for raising the age of criminal responsibility." Then comes the incredible anti-climax: the Committee gravely assure us that they think the age "could safely be raised to *eight*." The effect of the revolutionising of the whole attitude of society towards child offences over hundreds of years is to determine that the age of criminal responsibility should be raised by one year!

In our view, the issue to be decided is, not the appropriate age of criminal responsibility, but the appropriate age for calling in public representatives

¹ "Juvenile Courts and Probation," p. 21.

to assist parents in dealing with juvenile offences. The answer depends upon the nature of the public intervention. If the intervention is by the method of the police and criminal trial, one would like to withhold children from it as long as possible. But if the object is to provide the best possible treatment and educational environment for the development of the child, one would welcome early intervention.

TRANSFERENCE TO THE EDUCATION AUTHORITY

To emphasise the new attitude towards Juvenile Offenders, and to express it in a suitable environment, we would transfer the responsibility of dealing with them from the Judiciary to the Education Office. The educational authorities are already concerned with themselves with juvenile delinquency. To the remarkable achievements of Dr. Cyril Burt, the school psychologist employed by the London County Council, we shall refer later. His work is approached in exactly the kind of spirit we should like to see applied to the whole field of juvenile offence. Moreover, the major consideration in the treatment of Juvenile Offenders is inevitably education. If the children have to be taken away from their homes, they are sent to Industrial or Reformatory Schools, some of which are already under the control of educational authorities, and, even when children are put on probation, the co-operation of the local educational staff and of the Care Committees is essential. Once the principle of education instead of punishment is accepted, the suitability of making the Educational Authority responsible for dealing with Juvenile Offenders is self-evident.

If the Education Authority were given this duty, we should not fix a hard and fast rule as to the minimum age for bringing offenders before the Juvenile Courts,¹ though the age of twelve might be taken as a general direction. Children vary so much in development that in one case a child of ten might benefit by this treatment, whilst in another a child of twelve might be unsuitable for it. We should ask the School Psychologist (every Educational Authority should appoint one) to make a preliminary investigation in each case and to report to the Court on the action he recommends. When it was felt desirable that the child should be brought before the Court, the proceedings should be informal and sympathetic, and the child should be made to feel that the purpose is to help rather than to judge. In the case of younger children, the primary consultation should be with the parents and the school teacher. With older offenders, the proceedings would be directed more closely upon the offender.

The appropriate maximum age is difficult to decide. Some of the Juvenile Courts in other countries deal with offenders up to the age of twenty-one, but the Departmental Committee points out that many young men of nineteen or twenty are doing adult work and are married with children of their own, and urges with some force that it is illogical to bring them before a Court whose main function is to care for children.² The Committee recommends that the maximum age should be raised from sixteen to seventeen.

The main consideration in our mind is the treatment to be given. Where it is necessary to remove

¹ We should like another term than "court" to be used, but confess we are at a loss for an alternative.

² Report, p. 24.

an offender under sixteen from his home for educational treatment, a boarding school up to secondary standard would be appropriate. After the age of sixteen, an industrial training centre would be more appropriate. We should, therefore, limit the age for Juvenile Courts to sixteen, and set up separate Courts, as described later, for young offenders between sixteen and twenty-one.

SEPARATION FROM THE ORDINARY COURTS

The Juvenile Courts should be separated completely from the ordinary Courts. At present, the Juvenile Offender is taken to the police station and charged in exactly the same way as the adult offender. If the police think he should be retained in custody, he may even be kept in the police cells or, if unruly and above fourteen, remanded in prison, though, fortunately, the number so dealt with is small (most juveniles on remand are sent to "Places of Detention"). "The majority of Juvenile Courts throughout the country are held in the same building as that in which the ordinary Courts are held," records the Departmental Committee, "and usually in the same room."¹ The transference of responsibility to the Ministry of Education should be followed by the transference of the meeting place of the Court to the offices of the Education Authority, or to separate buildings, such as those now used in Liverpool, Birmingham, and, in six instances, in London. The room should be simple and homely, without the terrifying dock and high magistrates' bench of the ordinary Court.

The Juvenile Court building should be used,

¹ Report, p. 35.

instead of the police station, to receive charges, and the officer responsible for this duty should be a member of the staff of the Juvenile Court, and not a police official. In villages or small towns where there are no educational offices, the charge might be made before a member of the School Management Committee. Whilst it would still be necessary to leave the duty of charging Juvenile Offenders to the police, officers should be required to attend the Courts in mufti, and not in their official uniform. Everything possible should be done to remove the element of fear from the proceedings and the environment.

In no cases should Juvenile Offenders be kept in custody in police cells or prisons. In cases where it is advisable to move offenders immediately from undesirable associations, they should be boarded out for a night or two in suitable homes, a list of which should be compiled. If mental observation is required (as it would be in the case of unruly offenders), they should be transferred to the detention centres which we suggest should be established in connection with the psychological clinics (see p. 48).

THE CHOICE OF MAGISTRATES

The second requirement is a specially selected panel of magistrates (again we should like a new word). The Departmental Committee well defines the qualities needed as "a love of young people, sympathy with their interests, and an imaginative insight into their difficulties," with common sense.¹ But, except in London, where the Home Secretary is directly responsible for the appointments, the selection is now largely haphazard. Some Juvenile

¹ Report, p. 25.

Court Benches have no woman magistrate, and, whilst many take a sincere interest in the work, there are instances in which magistrates are unfitted, through deafness or other physical disability, or in which their work is done "perfunctorily or without any genuine grasp of the problem involved."¹ The transference of the responsibility of appointment to the Education Authorities would instil a healthy breath of democracy and would ensure that the selections were made by bodies accustomed to dealing with questions related to children.

The Departmental Committee recommends the appointment of younger men and women ("most magistrates are not appointed until they have reached middle age"), with special qualifications, including, "experience and interest in educational and social work among the young, as well as practical knowledge of the homes and conditions of life of the class of children who usually come before the Juvenile Court."² This "practical knowledge" should not be merely that gained by social workers in the course of visits to the poor; it should also be the knowledge of working-class men and women who understand from first-hand experience the deteriorating effect upon child life of poverty, overcrowding and a cramped existence.

To prevent the child being overwhelmed, not more than two magistrates should, as a rule, be present. Sometimes the present Benches strike terror in the child as much by their number as by their nature. Often there are six magistrates, sometimes ten. Even if each magistrate is individually sympathetic, such

¹ Report, p. 25.

² *Ibid.*, p. 26.

an imposing Bench inevitably frightens the young offender and destroys any opportunity of securing his goodwill and co-operation.

A CHANGED PROCEDURE

We have already indicated the need to change the procedure of the Court. The stupidity of formally asking a juvenile whether he is "guilty" or "not guilty," of taking formal evidence, of placing the child on oath, and of solemnly inquiring, "do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" need not be stressed. "Could anything better illustrate the hopelessly antiquated attitude of the law towards the child," asks Mr. Clarke Hall, "than this amazingly solemn and cumbrous provision for the method of his trial?" He proceeds:—

"It is doubtful if there is one boy or girl of fourteen in a thousand who would have any idea of what 'being dealt with summarily' means, unless it be that he or she is to be punished at once without bothering to inquire any further into the matter. It is true that an explanation *may* be given afterwards, but, if the strict letter of the law is adhered to, it is necessary that the question should be first put in the exact words of the statute. Imagine the effect upon the child's mind! He comes into court already frightened and confused. After several witnesses have been called, the charge is to be solemnly read out to him, 'for that he did on the — day of — feloniously and burglariously break and enter,' etc.; then comes the (to him) utterly unintelligible question (regarding trial by jury). By this time he has quite lost all hope of even partially understanding what on earth it is all about, and relapses into a sullen silence, which no subsequent explanations can overcome."¹

In practice, most of the Juvenile Courts, despite their connection with the judicial administration are better than the principles which are supposed

¹ "Children's Courts," p. 60.

to guide them. Many of the magistrates regard the official procedure as a formality, and conduct the Courts in an atmosphere of friendliness which removes the terror usually associated with a trial. This is, however, by no means universal. For the new Courts, we should allow considerable elasticity in procedure, laying down the principle of consultation to decide the best curative treatment rather than trial with the object, if guilt be proved, of conviction and punishment. The Court would naturally approach a child of twelve differently from a youth of fifteen.

The new Courts should have power to act in all cases, with the right of the parent to appeal against the decision to a County Court, though we anticipate that such appeals would be few under the new conditions. We should, of course, abolish all formal convictions.

Along these lines, we believe, there would be promise of making the Juvenile Courts really effective instruments of curative treatment.

CHAPTER V—THE IMPORTANCE OF THE PSYCHOLOGIST

THE attitude in which we consider the community should approach the individual offender has been well stated by Dr. Cyril Burt. "The whole question is one not so much for a legal or moral code, but, in the last resort, for scientific investigation. A crime is not a detached and separable fact, self-contained and self-subsisting. It is only a symptom." He continues :—

"It is a mental symptom with a mental origin. And there is now a definite body of ascertained knowledge, tracing mental symptoms to their causes, just as medical knowledge tracks down the sources of bodily disorders, and so can prescribe for each its proper treatment or appropriate cure. The study of the criminal thus becomes a distinct department of this new science—a branch of individual psychology; and the handling of the juvenile offender is, or should be, a practical application of known psychological principle.

"To whip a boy, to fine him, to shut him up in a penal institution, because he has infringed the law, is like sending a patient, on the first appearance of fever, out under the open sky to cool his skin and save the others from the infection. It is as blind and unintelligent as the primitive treatment of malaria, in the days when the parasite was unlooked for and the mosquito ignored. With moral disorders as with physical, we must find and fight, not symptoms, but causes. Nor before causes have been discovered, can cures be advised." ¹

This scientific method demands an inquiry into the physical and mental condition of the offender and

¹ "The Young Delinquent," pp. 4 and 5.

into his environmental circumstances. It makes the offender, rather than the offence, the subject of investigation, because only thus can the cause of the offence be discovered and curative treatment be prescribed.

But we should not let loose the psychologist and his collaborators except in a case of clear necessity. We confess to a dislike of probing into the lives of individuals by busy-bodies with a concern for other people's welfare. The poor already suffer too much from the inquisitions of so-called social workers and charity dispensers. We should not, therefore, make the first offender the subject of inquiry, unless the offence is a serious one, or the offender is obviously abnormal or his environmental conditions are known to be bad. It will often be enough in the case of first offences of the "accidental" type for the Court to utter a serious but kindly warning, and even a second or third offence of a petty character can be dealt with, say, by a fine, to cover the costs of the action or as restitution.

But where the offence is repeated several times, or where it is serious, the offender abnormal, or the environmental conditions are known to be bad, investigation should always precede a decision as to treatment. In such cases, the attention of the school psychologist should be drawn to the charge as soon as it is made and before it comes to the Court. The psychologist should see the child, and obtain reports from the school teacher and from a member of the Care Committee, or of a special investigating staff, regarding his behaviour, and his home and environmental conditions.

PSYCHOLOGICAL CLINICS AND RESIDENTIAL CENTRES

If this work is to be done adequately, the services of a psychological clinic should be available. In this country, such clinics are few. Beginnings have been made in London, Birmingham, Glasgow, Stoke-on-Trent, and one or two other places, but the arrangements and staffing are meagre compared, for example, with those in America. Dr. Burt points out that at Birmingham two medical psychologists deal with all delinquent cases, juvenile and adult, whilst at Philadelphia, with a similar population, the municipal Court employs two psychologists, two surgical specialists, four psychiatrists, and six women physicians.¹ It would not be necessary, in smaller cities, that the psychological clinic should devote itself solely to cases of delinquency. It might have the same status as a public hospital, with in-patients' and out-patients' departments, to which parents would bring their children, or adults come, with no sense of disgrace. The in-patients' department could be used for offenders on remand for observation, and attached to the clinic there should be a staff of trained social workers, capable of making reports and familiar with industrial life and the problems of the working class.

In addition to these local psychological clinics, it would be necessary to establish Observation Centres to which more difficult cases could be sent for longer periods for study and treatment, say for six months or a year. The Departmental Committee on the Treatment of Young Offenders recommends the opening of three such Centres, one in London, one

¹ "The Young Delinquent," p. 618.

in the Midlands, and one in the North.¹ This seems to be quite inadequate, especially as it is suggested that they should serve for all offenders up to twenty-one. From six to twelve Centres would certainly be required if the necessary individual attention is to be given. The Committee draws attention to the Observation Centres set up by the Belgian Government at Moll, for boys, and at Namur, for girls. To these Centres young offenders are sent by the Courts as a preliminary step, and their subsequent treatment depends on the results of the observation. We quote the account given of the Moll school :—

“The school is organised on the basis of separate houses, according to age, and there the lads live for several months under a carefully organised system of work and recreation, though there is considerable freedom of choice left to the individual. An ingenious system of tests is applied to ascertain as far as possible the particular boy's tastes, abilities, and proclivities. As a result of the treatment, some of the lads are returned to their homes after a stay of a few months (about 10 per cent.), some are boarded out (about 10 per cent.), some are sent to voluntary homes (about 4 per cent.), some are sent to a State School (about 52 per cent.), and some to a special institution (about 21 per cent.) Moll is under a Director of exceptional qualifications and enthusiasm for the work, and it is apparent that in this, as in other instances, the success of an institution largely depends on the personality of its head.”

It is encouraging to find the Departmental Committee declaring that the main principle of the Moll Centre supplies “an example of the sort of examination which is required in this country.” If Centres on these lines were established as supplementary to the local clinics, the thorough examination and treatment of all abnormal Juvenile Offenders would become realisable.

¹ Report, pp. 44 and 45.

The value of psychological and social inquiry before treatment is shown by the experience of Dr. Burt. He reports that when the treatment recommended has been carried out, an apparent cure has resulted in 62 per cent. of the cases—that is to say, no delinquency has been notified for at least one year, and no fresh delinquency seems likely to ensue. In 38 per cent. of the cases satisfactory though incomplete progress has been made, either the delinquencies have diminished in number or gravity, or else, though no delinquencies have been reported, there remains a suspicion that they may have been repeated. In only 2 per cent. have the reports proved wholly disappointing. In the cases where the recommendations have not been followed, 12 per cent. appear to have undergone a cure, 23 per cent. appear to be making moderate progress, the remainder are unsatisfactory. The contrast is noteworthy. *Where the treatment recommended has been carried out, the failures are 2 per cent. ; where it has not been carried out, the failures are 65 per cent.*

ONE OF DR. BURT'S CASES

It may be well to cite one of Dr. Burt's cases as an example of the helpfulness of an inquiry. Jerry, although only seven, was a truant, a thief, and a murderer. In the ordinary way, he might have been sent, without any understanding of his motives or the necessary treatment, to an Industrial School, with its mechanical routine, until he was sixteen. He was guilty of constantly staying away from school, of stealing food and money, and, finally, of deliberately pushing a companion into a canal and drowning him. Investigation showed that he was

the illegitimate child of a woman packer and that he was cared for, whilst his mother was at work, by his grandmother. The mother's weekly wages were 26s., of which she paid 7s. for a subterranean tenement, half scullery, half bedroom. At the age of six Jerry fractured his skull and went, first to hospital, and then to a convalescent establishment. His school was twenty minutes' walk from his home, and Jerry, returning from his ten weeks' holiday, found it agreeable to linger round King's Cross terminus (alluringly close to the school), instead of submitting to the discipline of the classroom. If he missed his food, he could stay the pangs of hunger by snatching buns from the restaurant counter, or tugging bananas out of crates on the platform.

One midsummer morning, he and two other little truants strolled off to catch minnows in the Regent's Canal. The smallest of the trio had a toy aeroplane. Jerry demanded it and, when it was refused, threw the boy into the canal, kicked away his fingers as he clutched the bank, and watched, with jibes and taunts, while his body went under.

At the inquest, Jerry declared that his companion fell into the canal and the death was held to be an accident. But afterwards Jerry's behaviour became increasingly eccentric; there were wild outbursts of inexplicable passion, half terror and half temper. A psychological examination was accordingly requested, and Dr. Burt learned the truth. This is his comment :—

“ Jerry's previous history throws much light upon his culminating exploit. The main events we have already observed. We have seen how the long holiday that followed his accident implanted a deep distaste for school; and so led him to play the incorrigible truant. Further exploration throws up another

factor. It shows how Jerry, dimly conscious of a shadow on his birth, slowly framing to himself a notion of some social grievance, had grown fiercely resentful of the slurs that the neighbours cast upon his parentage. The very playfellow, whose life he took, was wont to taunt him with an ugly name ; more than once Jerry had felt a wish to silence this aspersion, a dishonour which, though he could not fully comprehend it, seemed to make both himself and his family outcasts from the rest. This long-standing provocation, more than any passing whim for a 2d. toy, was the ulterior motive, though doubtless a half unconscious motive, for his sudden violence.”¹

Jerry is now in a Home. The results of Dr. Burt’s investigation, in revealing the experiences through which the boy has been and the ways he has met them, have shed a new light on his mental needs and proved helpful in the moulding of his character. Reports upon his continued progress are sent in month by month, and, though development is slow, it is hoped that ultimately he may be trusted to go back to his mother and conduct himself like a normal boy.

THE SOCIAL FACTOR

All that can be done for Jerry as an individual is being done ; but the thought also arises, as one reads Dr. Burt’s story, of the social responsibility for his crime. That subterranean tenement, with his mother out all day working as a packer for a weekly wage of 26s., that public school which was to him a prison, that cramped existence, that absence of legitimate outlet for his boyish nature, that hard life of his mother separated from her child—have these no share in the causation of the crime ? Still more, has not the community’s stern and narrow view of the circumstances of his birth some share ? Little Jerry is a victim of social conditions and social opinion.

¹ “ The Young Delinquent,” pp. 8 and 9.

The psychological examination and individual attention form only one side of the curative treatment of crime. Investigation will show in many cases that social conditions, rather than individual failings, are chiefly responsible for the state of mind which gives rise to offences. We may remove the individual temporarily from the influence of those conditions, but the probability is that ultimately he will return to them, and meanwhile the conditions are creating further offenders. It is analogous to the treatment of an individual tubercular case in a sanatorium. When he is well he too often returns to the overcrowded conditions which create the disease ; and all the time such conditions are breeding new cases.

We must not concentrate on the individual so much that we forget society. Individual treatment is little more than Red Cross work ; the more important task is to stop the cause of the casualties. It is to be hoped that the result of the investigations into the social conditions of offenders will be published and form a further incentive to abolish poverty, overcrowding, unemployment and the social system which creates them.

CHAPTER VI—THE TREATMENT OF THE YOUNG OFFENDER

The psychological and social inquiry having been made, what courses are open to the Court when it receives the report? It can at present impose a fine on the young offender (if above fourteen) or on his parents, or require the parent to enter into recognisances for the child's behaviour. It can place the offender on probation. It can order him to be whipped. It can place him under the custody of a relative or send him to a Place of Detention or an Institution for Defectives, or a Reformatory (between the ages of twelve and sixteen) or Industrial School (if under twelve, and, in the case of first offenders and those unlikely to be of evil influence, under fourteen). Let us examine these alternative methods from the point of view of curative treatment.

A NON-PUNITIVE VIEW OF FINES

As we have explained, we should not call in the psychologist for normal cases of the "accidental" type. A warning from the magistrates or the imposition of a "fine" will, with the majority of first offenders, and with many cases of second and third offences of a petty nature, be enough. Fines are now imposed in approximately one-third of the cases which come before the Juvenile Courts. The disadvantage of fining is that at present it involves a conviction and thus rules out probation. Illogically,

however, if an offender has been placed on probation and breaks its conditions, he may be fined for this particular failure "without prejudice to the continuance in force of the probation order."¹ We should, as explained above, abolish all convictions, and accordingly this disadvantage would be removed.

A second, and more serious disadvantage, is the poverty of the offender or his parents. In those 53 per cent. of the homes where every halfpenny is required for the necessities of life, to impose even a small fine is to commit a greater crime than most of the original offences. If society does not provide for the payment of living wages, it has no right to impose a fine at the cost of food or the first requirements of life. Moreover, a fine, as ordinarily understood, embodies the punitive aspect of dealing with crime which in our view should be entirely eliminated.

We should, therefore, limit "fines" to a contribution towards the costs of the case and to restitution. The principle of restitution in a society of economic equality would be obviously sound; but under present conditions restitution cannot be applied justly where poverty has occasioned the offence. Under other circumstances, the offender, if of working age, might be required to attend a Centre and do useful work until the value of the fine is met. There is certain State work now reserved for prisoners. As the alternatives to imprisonment, which we suggest later, are applied, this work might be done at such Centres. Where monetary fines are imposed, provision should be made for payment by instalments, if necessary.

In some cases, it is desirable that the imposition

¹ Criminal Justice Act, 1925, s. 7, sub-s. (4).

of a "fine" be accompanied by surveillance or probation or recognisances by the parents. By another illogicality of the law, supervision until the fine is paid is allowed in the case of "juvenile adults" (that is, offenders between sixteen and twenty-one years of age) but not in the case of juvenile offenders. Often it is desirable to impose conditions under a probation order, or to require the parent to enter into recognisances for the good behaviour of the offender. Where the offender or the parent fails to pay the "fine," or to attend the Work Centre, we should, if good cause could not be shown, provide the Court with powers for his retention at the Centre until the allotted work is done.

THE POSSIBILITIES OF PROBATION

Probation is the most hopeful of our present methods of dealing with crime. The motive of reform supersedes the motive of punishment, individual attention is given, and the offender remains a part of the community without the stigma of segregation.

The method consists (to adopt the phrase of Mr. Flexner and Mr. Baldwin) of "educational guidance through friendly supervision." The offender is not convicted; he is placed on his honour under the care of a Probation officer who becomes a friend and adviser. "Mere surveillance is not enough. Probation is an intimate personal relation which deals with all the factors of a child's life."

The Court has the power to attach conditions to the Probation Order, with a view to removing the influences which have led to the offence and to substituting beneficial influences. The parents of the

offender may be required to move to a new neighbourhood, to transfer him to a new school, or to change his employment. The offender may be asked to give up bad companions, to remain off the streets at night, or to refrain from going to cinemas. He may be enjoined to attend evening classes, or to join a boys' club.¹ The Probation officer, if not overworked, visits him regularly, and by every means seeks to guide him in healthier courses.

The Probation system is highly developed in America, but in this country is still in its experimental stages. It was only in 1925 that provision was made for any national scheme. The Act of that year divided the country into Probation areas (normally, the Petty Sessional Divisions) and insisted that there should be at least one Probation officer for each. Previously, the appointment of officers was haphazard and the use of probation varied greatly. It has, however, been steadily extended. In 1913 the proportion of cases before Juvenile Courts placed on probation was 11·9 per cent.; by 1924 it was 19·62 per cent.

It is difficult to give any estimate of the success or failure of Probation from the statistics published. There are figures available of the number of offenders who have successfully kept the conditions attached to their probation orders, but the returns regarding their later careers are very inadequate. The former figures are remarkably encouraging. During the four years, 1921-25, 47,827 juvenile offenders were

¹ The Prison Commissioners, in their report for 1923-24 (p. 6), remarked: "even in present circumstances (of unemployment) it is rare for a lad or a girl to be received into prison who has been a member of a good boys' or girls' club, a boy scout or girl guide, or a member of the Church Lads' Brigade."

placed on probation. Of these, only 2,184 (or 4·6 per cent.) were sentenced for breach of probation conditions.¹ Reports have been prepared in five large towns regarding the subsequent careers of offenders placed on probation. These are less encouraging. In Cardiff, 57·79 per cent. of the offenders placed on probation in 1920, and 43·47 per cent. of those placed on probation in 1921, had committed further offences before 1924. In Leeds, 16·5 per cent. had repeated offences within four years; in Liverpool, 55·28 per cent.; in Portsmouth, 14·8 per cent.; in Birmingham, 35·1 per cent. The report of the Children's Branch of the Home Office (1925) comments, however, that "some of the probationers who reappeared before the Courts were charged with offences of a minor character compared with the original offences, and if these cases were omitted the percentage of successful cases would be increased."²

THE LIMITS OF PROBATION

Probation obviously has its limits. It is of little use in cases of mental defect which require treatment, or where home conditions are vicious, unless the offender is removed. The greatest likelihood of success lies in those cases where environmental influences outside the home are the chief contributory factors to delinquencies, and where new companionships and social activities give opportunities for changed habits and a developed life. Dr. Burt has well described the possibilities:—

¹ Third Report of the Work of the Children's Branch of the Home Office, 1925, p. 65.

² Pp. 16 and 17.

"The splendid success attained hitherto by the probationary system has been largely in those cases where a young person, near or not long past the age of leaving school, has been gliding into bad companionship or into a misuse of his free time, when away from the oversight of home, of school, or of fellow-workers. Such a youth the probation officer can readily befriend. . . . The unemployed or misemployed she can aid in their search for congenial work; the solitary or misguided she can introduce to educative influences and to recreative societies and clubs; she herself can prove a helpful confidante and counsellor, offering expert aid in the new problems and perils that confront each one; quietly, delicately, resourcefully, yet still with official sanction, she can make a thorough enquiry into all the circumstances of the case; she will be at hand, in her constant watchfulness, to pull the child up the moment he shows symptoms of a fresh relapse; and, should he come before the court again, she will be ready to advise the most appropriate course, lenient, stern, or summary, as the child in the end may require. If the case is really casual, if the sole factors are accidental influences in the delinquent's outer surroundings, he will quickly respond to her influence. The child who is amenable for evil is often equally amenable for good; and it may prove as easy for a sensible friend to guide him aright as for a corrupt acquaintance to lead him astray."¹

Where there is vice in the home or the parental influence is definitely bad, there is little chance for the best Probation officer to do his work effectively. Sometimes the Courts have sought to overcome this handicap by making residence at a "home" or institution one of the conditions of probation. In 1923, for instance, 518 probationers were sent to "homes," 224 of them for a year, 184 for two years, and 34 actually for three years. This, in effect, amounts to a new form of sentence, and a very serious one, which stretches the intentions of probation very far. Some of these homes, reports the Departmental Committee on the Treatment of Young Offenders, are run on "narrow and old-fashioned lines; the education and training given have not kept pace with modern developments, and

¹ "The Young Delinquent," pp. 196 and 197.

the life of the inmates is dull and uninspired.”¹ These homes are not open to control or inspection, and there is no guarantee of proper treatment. We agree with the Committee that the best method of dealing with this problem is to establish hostels from which the offender can go out to his work in the ordinary way, or to place him in approved lodgings. The Liverpool magistrates have opened such a hostel for boys and are taking steps to open one for girls. This hostel in addition meets the needs of boys who have been trained in industrial schools and who need a home from which they can go to work.

THE PROBATION STAFF

Probation work has undoubtedly also suffered, first, because the officers are as a rule given more cases than they can properly supervise, and, second, because the officers have not always been suited to their duties. The Home Office reports an instance where a single officer had 324 names on his list, and two other cases where three officers had 450 and 350 names respectively.² Individual attention under such conditions is impossible. To meet the need for additional personal attention, we suggest that full advantage should be taken of the possibilities of voluntary service. There are many young people with a developed social consciousness who would be ready to assist in this work. It is important, however, that great care should be taken in the appointments. Qualifications of character, temperament, sympathy, breadth of view and understanding

¹ Report, p. 55.

² Third Report of the Children's Branch, p. 22.

should be required in their case no less than in the case of full-time officers.

Mr. Clarke Hall's experience at Shoreditch indicates the value of voluntary help. He has the assistance of over seventy volunteers, which means that each has only one or two children to deal with. The volunteer generally has a close association with the district, and is almost invariably attached to the Scout, Brigade, Girl Guide, or similar movements, or to an institution or club where activity in connection with children is carried on. Such staffing gives the greatest opportunities of success. The results are indicated in this report for one year, given in his book on "*Children's Courts.*"¹

"During the year 1920, 652 children were charged, 576 boys and 75 girls. 225 boys and 22 girls were placed on probation.

"Ninety-five of these were supervised by volunteer officers.

"Twelve children were charged with having failed whilst on probation, five of whom were under the care of volunteer officers.

"Only one of this number was sent to an Industrial School, the remaining four being given an opportunity to finish their period of probation. This they seem likely to do satisfactorily."

The work of a Probation officer is both difficult and responsible, and it is important that the best available men and women should be secured for it. It demands officers who combine sympathy with insight, who possess an understanding of human nature which can detect both good and evil tendencies and potentialities, who have tact and forbearance and a wide knowledge of life, and whose personality is strong enough to win respect and exert a beneficial influence. Some of the officers attached to English Courts meet these exceptional requirements to a remarkable degree; Mr. Clarke Hall pays a high tribute to the full-time officers

¹ P. 128.

connected with his Court. But many do not. They are nearly always earnest and well-meaning, but often they are narrow and limited.

This fact raises the question of the field of recruitment. Probation grew out of the practice of releasing offenders conditionally on good behaviour, or under other recognisances. The Courts naturally desired that someone should keep an eye on them and used Police Court Missionaries for the purpose. When the system of probation developed, the services of the missionaries were still used, so that, in 1924, 60 per cent. of the 250 full-time Probation officers were agents of voluntary societies, and of these two-thirds were attached to the Church of England Temperance Society. The Act of 1925 has tended to perpetuate this position, because it provides that one-third of the salary of Probation officers may be borne by voluntary societies, thus encouraging local authorities to economise by accepting their nominees.

This state of affairs is disastrous to the *personnel* of the Probation staff. The virtual monopoly of the Church of England Temperance Society means, not only that there is a danger of a particular dogma being thrust upon the child, but also that in effect a religious test is applied and that candidates, however suitable, who are not communicants of the Church are shut out. There are men and women, with training in social science and experience of social service, who feel drawn to this particular form of work, and yet who are excluded from it because they will not enter through denominational gates. This is a grave defect of the English probation system which all who realise the importance of the best available staff must seek to remove.

It is very desirable that Probation officers should receive some training in the psychology of delinquency and child-life. They might well obtain it in connection with the psychological clinics which we have proposed should be set up. Courses on criminology might be arranged in connection with the local university, for which the clinic would provide an opportunity for practical demonstration. The social workers attached to the clinic should be valuable assistants to the probation officers.

THE CASE AGAINST WHIPPING

Whipping is now ordered much less than formerly. The number of cases has fallen from 2,079 in 1913 to 607 in 1924. During the war whipping was employed to a much greater degree. In 1917 there were 4,971 cases. The number of juvenile offenders was then greater, but the percentage that year was 9.65 compared with only 2.05 in 1924.

To order a delinquent child to be birched is, undoubtedly (to use the words of Mr. Clarke Hall), "the simplest, the most expeditious, the least expensive, and least troublesome method of punishing him." But Mr. Hall nevertheless argues against it. The delinquent boy often regards law and order as enemies against whom it is brave and manly to wage guerilla warfare. If he is caught and birched, his creed does not change. He looks forward to "getting his own back," and is more careful in the future not to be caught. Mr. Hall cites figures which show that the alleged deterrent effect of whipping is a myth. Of the ninety-nine boys birched at the Shoreditch Police Court during 1915 and 1916, thirty-five had previously been birched ;

a proportion of re-convictions considerably higher than that following any other method of treatment. Since 1918 Mr. Hall has abandoned the sentence of whipping, and he remarks that he knows of no circumstances which would induce him to resort to it again. At first he feared that the abandonment of corporal punishment would lead to an increase of delinquency, but the reverse proved to be the case. In 1917 (when 168 boys were whipped), 1,050 children were charged at Old Street ; in 1924 (when no boys were whipped), only 311. He does not claim that the reduction is due to the cessation of birching, but he suggests that it shows that whipping "is not the great deterrent it is claimed to be and that the abandonment of it does not produce an increase in delinquency." ¹

There is now a considerable body of authoritative opinion opposed to whipping. In 1920, a representative of the Board of Education made a careful study of the Juvenile Courts in four selected towns. In one town where birching was constantly ordered, he found that one boy out of every four so dealt with was re-charged *within one month* of sentence and that 80·34 per cent., or *four out of five*, were re-charged within two years. He gives several instances of the ineffectiveness of whipping. For example :—

"A. Charged with larceny : sentence six strokes. Six days later again charged with larceny : discharged with caution. One month later again charged with larceny : six strokes.

"B. Larceny : six strokes. Eight days later, warehouse-breaking : 21 days' detention.

"C. Shopbreaking in March : six strokes. Larceny in April : six strokes. May, on enclosed premises to commit a felony : discharged with caution. October, shop-breaking : six strokes."

His conclusion was :—

“ This method of dealing with offenders blunts the sensibilities at a time when it is most desirable that the boy should be awakened to intelligent response. Far from proving deterrent, birching sometimes has the exactly opposite effect, as in cases where the boy leaves the Court to repeat his offences immediately.”¹

The Scottish Report on Juvenile Delinquency reached similar conclusions.²

We need scarcely say that we favour the absolute abolition of whipping. It is naked punishment and must destroy any efforts of curative treatment. Although Dr. Burt favours its limited retention, he remarks that “ once a boy has been flogged, the psychologist finds it hard to regain his confidence and reawaken his self-respect.”³ The attitude of mind created by whipping is either revengeful or humiliated. Neither of these is an attitude upon which one can start to build character.

TRANSFERRED GUARDIANSHIP

The power to transfer an offender from the care of his parents to that of a relative or other fit guardian is rarely used. There are only about twenty such cases a year. This is due partly to the difficulty of finding suitable foster-parents and partly to the absence of provisions for financial assistance. The limited use of this method is very regrettable. A good home-life is for normal children infinitely better than institutional life, and, where offences are caused or encouraged by bad parental influences, the

¹ Report on Juvenile Delinquency, p. 28.

² P. 12.

³ “ The Young Delinquent,” p. 122.

most suitable treatment would be the care of foster-parents of good influence.

The Act of 1925 permits grants towards the maintenance costs of an offender transferred to another home under probation, and, where a clearly suitable relative or other guardian is available, this provision should be used as frequently as possible in appropriate cases. When a suitable guardian is not available, the recommendation of the committee on Reformatory and Industrial Schools (1913) and the Departmental Committee on the Treatment of Young Offenders (1927) should be put into operation, that guardianship should be vested, until the age of eighteen or twenty-one, in the local Education Authority, who should have the duty of finding an appropriate home, with the power to make maintenance grants, to which a contribution would be made from the national exchequer. Where the parents are in a position to pay, they should be required to contribute. This method of foster-parentage has been adopted successfully by Poor Law authorities in the case of necessitous children, and there is no reason why Education authorities should not operate it with equal success.¹

The managers of Industrial Schools have the power to board out children under eight until they are ten, or to a later age, with the consent of the Home Secretary. Except in London, this power is scarcely ever used. The London County Council has adopted with 300 children the method of boarding them out with foster-parents, and the commitment to an Industrial School is only applied in cases

¹ As explained later, we should transfer the responsibility of caring for necessitous children from the Poor Law to the Education authorities.

of failure. These are very rare, and the success of the experiment is proved by the fact that many of the children elect to stay with their foster-parents after the prescribed period.

Psychological and social inquiry would often indicate that transferred guardianship under normal conditions of home life is the best method of training a young offender. Education authorities should do their utmost to compile an adequate list of available foster-parents, taking care, however, that the prospect of a grant does not let in volunteers with purely monetary motives. In every case precaution should be taken to select foster-parents suitable in character and circumstances to the development of the young offenders allotted to them. With proper care, this method should save hundreds of boys and girls from a continued life of crime.

ABOLITION OF "PLACES OF DETENTION"

When imprisonment was abolished for young offenders under sixteen (except for unruly cases over fourteen), provision was made for sentences up to one month in "Places of Detention." These institutions are used for juvenile prisoners on remand as well as sentenced offenders. They are very unsatisfactory, since it is impossible to plan a remedial routine for short periods. We have already suggested that where it is necessary to detain young offenders on remand in custody, they should either be boarded out or accommodated at the Psychological Clinics, that offenders who fail to pay a fine should be retained at a Work Centre, and that cases requiring observation should be sent to a Residential Centre where psychological examination could be

carried out. If these reforms were put into operation, the present "Places of Detention" could be abolished. In actual practice, they are now little used for convicted offenders. Only about thirty cases per year are sentenced to detention.

THE TREATMENT OF MENTAL DEFECTIVES

We have seen from Dr. Burt's analysis that 4.1 per cent. of his cases were mentally deficient, a proportion four times greater than among non-delinquent children of the same social class. Nevertheless, the Courts only send 0.1 per cent. of the cases which come before them to institutions for defectives. A certain number of mental defectives are deliberately dealt with by other means, but there is no doubt that the treatment of a large proportion is decided without any realisation of their deficiency. An official inquiry recently showed that the defect often remains undiscovered until the child has been sentenced to some punishment or institution.¹ Even then the defect may be ignored except in cases where special examination is made.

The most desirable action is to discover the deficiency before the offence is committed. The Mental Deficiency Act requires that Education authorities shall ascertain the mentally deficient children, but it is clear that this duty is not adequately fulfilled. In some areas more than 1.5 per cent. of the school children are reported deficient; in other areas, fewer than 0.05 per cent. It is not credible that the incidence of mental deficiency really varies in this way; the only explanation can be incomplete

¹ Board of Education Report on Juvenile Delinquency, 1920, p. 12.

examination. The thorough examination in London reveals a percentage of 1.5 per cent. defective,¹ and this figure probably represents the degree of mental deficiency amongst school children in most industrial districts. It might be thought that rural areas would give a lower incidence, but a careful investigation in Wiltshire by Dr. Bowes yielded the high proportion of 3 per cent.² If the percentage of 1.25 per cent. be taken as an average, the result gives us 75,000 mentally defective children. Of these, less than half have been ascertained and only one-fifth are attending special schools. These are disturbing figures, and prove the need for far more thorough examination and provision.

If the proposals we have made for the psychological examination of young offenders were carried out, mental deficiency would be discovered, at least, when the child reached the Court, and appropriate treatment could be given. In some cases it would be sufficient to send the child to a Special School; in others, additional home care would be desirable through school nurses, welfare workers, or Care Committee officials. Where home conditions are bad or the case needs special attention, transference to a suitable foster-parent, to an institution for defectives, or to a hostel would be necessary.

The provision of institutional treatment for mentally defective children is seriously inadequate. The Mental Deficiency Act was passed only one year prior to the war, and until peace conditions were resumed it was regarded as impossible for local authorities to fulfil their obligations. But ten years

¹ "L.C.C. Report on Mental and Scholastic Tests," p. 168.

² *Lancet*, August 16th, 1924, pp. 313 *et seq.*

after the conclusion of peace, the position remains the same. "The ground lost has never been recovered," reports the Departmental Committee on the Treatment of Young Offenders,

and though the temporary difficulties which arose owing to the war can no longer be pleaded in extenuation, practically no progress has been made to grapple with the problem.¹

Indeed, the Board of Control points out that the position has become more acute, "as the number of beds has not kept pace with the number of new cases, and nothing has been done to overtake the arrears."² In 1925, no less than 2,338 cases requiring supervision were reported for which nothing had been done.

At present most of the institutions certified for receiving mentally deficient children are voluntary, though there are two State institutions, one at Rampton, in Nottinghamshire, and one at Warwick. The time has come when the public authorities should take full responsibility for all these schools, and should provide them on an adequate scale. The urgency of this need can scarcely be stressed too strongly.

Special steps are necessary to provide for mentally defective children when they pass the school-leaving age. In the case of children who have been attending Special Schools, and who usually remain at home until some simple employment can be found, continued supervision is essential if there is any tendency towards delinquency. At Leeds and elsewhere workshops have been opened, where rug-making, boot-repairing, and other simple occupations are followed. Such occupation-centres should be established every-

¹ Report, p. 113.

² Annual Report, 1925.

where. In the case of children who have required institutional treatment, permanent segregation is often necessary, but sometimes, after suitable training, they are capable of earning a livelihood under supervision, and it has been found that farm work has been particularly suitable, even where records have been bad. Public provision should be made for such cases.

There is a large class of border-line cases among juvenile offenders who may not be certifiable, or who, though certifiable, are capable of useful lives without the restrictions of an institution. For these, hostels from which they could go out to work, or cottage colonies, might be provided. They should be connected with a certified institution, from which suitable cases might be transferred and to which they could be returned if necessary.

INDUSTRIAL AND REFORMATORY SCHOOLS

We turn lastly to the offender of normal mentality who, owing to bad home conditions or deeply-rooted habits, requires to be transferred to an institution and subjected to education and training over a period of years. This step should be taken only as a last resort, because the institutional segregation of children is undesirable, even under the best conditions. "I am confident," says the late Chief Inspector of Reformatory and Industrial Schools, "that long periods of detention in any institution, no matter how excellent it may be, do not quicken, but rather deaden the intelligence."¹ "No child," concurs Mr. Clarke Hall, "should be sent to such schools, if there is any reasonable hope that any of the

¹ Annual Report, 1916.

other methods provided by law are at all likely to prove sufficient and effective.”¹ The developments of alternative methods of dealing with young offenders is reflected by the fact that the number of children detained in Industrial Schools and Reformatories in 1913 was 18,916, whilst in 1922 it had fallen to 9,888.

Industrial Schools are provided for offenders under twelve, or up to fourteen (*a*) if they are previously unconvicted or unlikely to have an evil influence, or (*b*) if they are beyond the control of their parents; or are truants who have disobeyed a Court order to attend school; or are found begging, wandering, homeless or destitute, or in the company of thieves or prostitutes, or have criminal parents or guardians. Reformatories are provided for offenders between twelve and sixteen (in practice it is rare for a child to be sent before fourteen).

A child can be committed to an Industrial School for any period up to the age of sixteen, but the managers have power to release him on licence before the term of committal has expired. He remains under the supervision of the managers until eighteen. The period of committal to a Reformatory may be from three to five years, and must not last beyond nineteen. The offender remains under the supervision of the managers until he is nineteen, even if he be released.

A few years ago the management and discipline of Industrial Schools and Reformatories left much to be desired, but under Home Office inspection they have greatly improved, though standards still vary. Most of the schools are under private management; a

¹ “The State and the Child,” p. 22.

few are under the control of Education authorities. In our view, the public authorities ought to be entirely responsible, except, perhaps, in a few special instances where experimental methods are being tried. The public meets the full cost for the maintenance of each delinquent, and under private management there is a danger that children may be retained longer than is necessary in order to retain the grant. Moreover, whilst the schools are run under individualistic control, the necessary co-ordination to secure the classification of different types of children in distinct schools, and the transference of a child from one school to another, is difficult. The sectarian basis of certain schools is also a drawback. It is the duty of the public to educate and train these children, and the public management of the schools should be insisted upon.

CO-ORDINATION UNDER EDUCATION AUTHORITY

An early opportunity should be taken to co-ordinate and reorganise entirely the varying systems for the education and training of young offenders and destitute children. At present private management, management by the local Education Authority, and management by the Poor Law Authority exist side by side. A destitute child may be sent to an Industrial School under private management, to an Industrial School under the Education Authority, or to a Poor Law School ; it is all a matter of chance. The Industrial Schools and Reformatory Schools overlap ; children from twelve to fifteen are to be found in both. All these schools should be brought under the Education authorities and should be regarded as Public Boarding Schools.

There might be two classes of schools for different ages, parallel to the elementary and secondary day schools, and there should be different types of *régime* for different types of children. This classification should not be based so much on the offence as on the offender. "It is not what the child has done, but what he is capable of becoming, that provides the true basis for sound classification,"¹ writes Dr. Burt. Some objection may be felt to accommodating destitute children with offenders, and every means should certainly be taken, such as boarding out with foster-parents, to keep them outside institutional life. But it should be borne in mind that the punitive aspect would be deliberately eliminated from these schools, and, even now, it is found in actual practice that there is little difference between the "delinquent" and the "unfortunate" child. If we regard these institutions as Boarding Schools for children for whom the Education Authority has had for one reason or another to accept the responsibility of guardianship, rather than as penal establishments, the stigma attaching to them, already much diminished, will disappear.

We should like to see bold educational developments in the direction of the maximum of freedom and self-government on the lines of the George Junior Republic, at Freeville, near New York, and the recent experiments at the Little Commonwealth (Dorsetshire) and Sysonby Village Colonies in this country. These concern, for the most part, offenders over sixteen (see next chapter), but we believe that the principles which they have successfully embodied could be adapted in a modified form to younger offenders also.

¹ "The Young Delinquent," p. 111.

EMPLOYMENT ON LEAVING SCHOOL

Finally, the guardianship of society over the young delinquents in its Boarding Schools must not end until the training given has found expression in useful employment providing a decent livelihood. It is futile for the community to care for these boys and girls and to train them over a long period of years, if at the end it cannot provide an opportunity for honourable work. Here we touch again the problem of unemployment and wages and social conditions generally. Why, it may be asked, should we secure the ex-offender work at a living wage, when we do not secure it for thousands of law-abiding citizens? Our general failure must not be made a justification for a particular failure. To rescue a child from crime-producing conditions, and then, after careful training, to return him in his 'teens to conditions which again encourage crime is as barbarous as it is stupid. Hostel accommodation should be provided, as in the case of Liverpool, for these boys and girls wherever necessary, and training with maintenance should be continued under free conditions until appropriate work is found.

CHAPTER VII—THE ADOLESCENT OFFENDER

THE contradictory designation " Juvenile-Adults " is given to offenders between the ages of sixteen and twenty-one. So far the results have not been published of any thorough examination into their environmental, hereditary, and physical and mental characteristics, but it can be assumed that, broadly speaking, the description given of juvenile offenders applies also to them. The reports of the Borstal Association bear out the emphasis which Dr. Burt places on home conditions. In 1925, for instance, the Association stated that only 189 of 507 lads had what could be called normal homes. There are two distinctive factors which should be specially noted.

THE INFLUENCE OF PUBERTY

The first is the influence of adolescence upon crime. From the table given on page 93 it will be seen that 39 per cent. of habitual offenders were first convicted when from fifteen to twenty years of age. This is a startling fact, which points to the supreme importance of these years in the determination of the life led subsequently. " Adolescence," says Stanley Hall in his authoritative work on the subject, " is pre-eminently the criminal age, the age when most vicious careers are begun."¹ At this period, he believes, nearly every child passes temporarily through a delinquent phase.

Dr. Burt, without taking this extreme view, finds that during this period the growth of inborn intelli-

¹ " Adolescence," Vol. I., p. 325.

gence is retarded and temperamental instability is increased, leading to a corresponding re-inforcement of all the primary instincts and emotions :—

“ The schoolboy he has left behind him. Adult perfection—with all its higher powers of intellect and stronger powers of self-command, its richer experience, its wider social outlook, its fuller domestic independence, its more intimate contact with outer reality—this he has not yet reached. And he seems first compelled to relapse into, or at any rate, to resume (though, of course, upon a different scale), much of the primitive selfishness, impulsiveness, and fancifulness of the earliest years of infancy.”¹

A remarkable fact, to which Dr. Goring, we believe, first drew attention, is the close relation between the age incidence of physical disease and crime.² Dr. Burt gives a diagram of the curves of the age incidence of enteric fever and of tuberculosis and of the first convictions of habitual offenders. They rise and fall almost identically. He remarks that this is paralleled in the case of other illnesses :—

“ It is curious to observe that, with these ingrained offenders, the curve of first commitments closely resembles the curve for the age incidence of many illnesses—for instance, measles, scarlet fever, enteric fever and pulmonary tuberculosis. It is almost as though crime were some contagious disease, to which the constitutionally susceptible were suddenly exposed at puberty, or to which puberty left them peculiarly prone.”³

In the case of girls, the special physiological disturbance of puberty sometimes causes disturbances of mind which encourage crime. Thefts, and particularly shoplifting, are frequently committed during the menstrual and pre-menstrual period by girls whose lives are often otherwise law-abiding. Dr. Burt reports the following results of observation :—

“ In eighteen young girls, aged fourteen to nineteen, kept under observation from six to seventeen months, and selected because

¹ “ The Young Delinquent,” pp. 223–24.

² “ The English Convict,” p. 201.

³ “ The Young Delinquent,” pp. 218–19.

of the frequency of their misdeeds, I found that of the total number of demonstrable thefts (amounting in the aggregate to eighty-seven), as many as 34 per cent. occurred during, what may be termed, the menstrual week ; and, on an average, only 22 per cent. during each of the other three weeks. In three of these cases more than half the thefts were committed during the seven days in question ; and in five other cases taken from a longer list of 200 girl delinquents, more than three-quarters ; in two, there seemed an approach to a fortnightly rhythm, with an interposed disturbance, perhaps connected with the so-called 'Mittel-Schmerz.'"¹

This physiological urge towards the committal of offences makes it particularly desirable that we should treat adolescent crime remedially rather than punitively, and that, as a community, we should seek to provide healthy means of expression for adolescent impulses and so prevent their perversion in crime.

THE EFFECT OF UNEMPLOYMENT

The second special factor regarding adolescent crime is sociological. The prevalent unemployment plays havoc with the character of boys who leave school with no occupation except idling in the streets. Again and again, in the reports of Prison Governors we find references to the relation between unemployment and the offences of "Juvenile-Adults." The Governor of Wandsworth Prison reported in 1924 that 70 per cent. of his prisoners under eighteen were out of work at the time of their offence.² The Governor of Preston Prison, in the same year, draws attention to the effect of unemployment following a blind-alley occupation :—

"The question of unemployment seriously affects the lads in this area. The majority of the lads leave school at the age of fourteen years, and are straightway employed as errand and

¹ "The Young Delinquent," p. 225.

² Prison Commissioners' Report, 1923-24, p. 63.

messenger boys in the towns, at minor jobs in the mills or as scalers or rivet boys in the shipyards in Barrow. The wage is small, but satisfies the ex-school boy. However, when they reach the age of sixteen, they want more money, plenty of young boys from school are found to take their places, and consequently the idle period arrives and the career of crime commences."¹

We give a third quotation from the report of the Governor of Durham Prison for the same year. The young prisoner of to-day, he says,

"has never done any work at all—he does not know what work is, and sees no connection between it and daily bread. Two or three years ago he left school and has loafed about the streets ever since. His father, mother, brothers, sisters and he are all living on the 'dole.' All his companions are in like condition, with himself, and through sheer idleness and ennui he lapses into serious crime. The boy problem of to-day seems to me more difficult of solution than it ever was. The country is raising a population of unemployables, loafers and thieves, and lads cannot be blamed—they are the victims of the trade conditions that have prevailed for the last three years."²

"Victims of trade conditons." That realisation should drive from our minds all punitive motives and lead us to recognise our grave social responsibility for the ruination of these young lives.

TRANSFERENCE FROM ADULT COURTS

"Juvenile-Adults" are tried in the Adult Courts as fully responsible persons. The Departmental Committee on Young Offenders recommended that lads from sixteen to seventeen should be transferred to the Children's Courts. We should transfer all offenders under twenty-one. Their cases might be heard separately from those of offenders under sixteen, and we think it would be desirable to have a separate bench of magistrates. The problem of the normal offender between sixteen and twenty-one is largely one of unemployment, and the Juvenile Unemploy-

¹ Prison Commissioners' Report, 1923-24, pp. 58-59.

² *Ibid.*, p. 46.

ment Advisory Committees would seem to be the most appropriate bodies to nominate magistrates with the necessary qualifications. In order not to complicate administration, however, we should place responsibility, as in the case of young offenders, with the education authorities. They are already dealing with vocational training.

We should also adopt the same methods of dealing with charges and remands as proposed for offenders under sixteen. That is to say, the charge would be made at the Juvenile Court and offenders whom it was necessary to keep in custody would either be boarded out, or, where examination seemed desirable, accommodated in the in-patients' department of the Psychological Clinic.

AWAITING TRIAL AND ON REMAND

The present practice of retaining "Juvenile-Adults" in police cells before the trial, and in prisons whilst on remand or awaiting trial, is disastrous from the reformatory standpoint. The atmosphere and surroundings are penal and the dangers of contamination great. The general custom of accommodating suspected offenders on remand in prison, where punitive discipline is inevitable, is unjustifiable; we have no right to regard them as guilty until they are sentenced. In the case of adolescents, the practice is particularly undesirable. They become accustomed to prison conditions at a decisive age and feel themselves identified with the criminal classes. The number of "Juvenile-Adults" imprisoned on remand, or whilst awaiting trial, is estimated by the Departmental Committee to be over 2,000 annually in the case of lads, and over

300 in the case of girls This is a scandal to which the public should immediately demand an end.

OFFENCES OF " JUVENILE-ADULTS "

It is not possible to give a survey of the offences committed by " Juvenile-Adults " over a period of years because the returns made to the Home Office by the Courts are not classified according to age. But a special return was made for the Departmental Committee on Young Offenders for the three months ending December 31st, 1925, which showed that 4,734 persons were proceeded against *after apprehension*. This indicates about 19,000 cases a year. The estimated number of persons between sixteen and twenty-one proceeded against *by summons* during the same period was 18,000; that is, 72,000 for a year. This gives us a total of about 91,000 " Juvenile-Adult " cases annually.

Of the 4,734 persons proceeded against after apprehension, 4,251 were dealt with summarily. The following analysis of the principal offences committed is given :—

	Per Cent.
Larceny and burglary	40·28
Offences against regulations	17·2
Drunkenness	10·39
Gaming	6·79
Offences against military law	4·01
Malicious damage	0·87
Other offences	20·76

This analysis cannot be accepted as fully representative, since it does not include cases heard on summons. But there is one striking contrast with the analysis we have already given of the offences committed by those under sixteen (p. 35). In

that table malicious damage stands at nearly 17 per cent. of the total. Here it is less than 1 per cent. An instinct to destroy—a familiar trait amongst children—evidently finds vent among the younger offenders.

THE PRESENT TREATMENT OF OFFENCES

The Courts can now treat “ Juvenile-Adults ” in the following ways :—

Dismissal of charge.
 Discharge on recognisance.
 Probation.
 Fines, damages or costs.
 Corporal punishment.
 Borstal.
 Police cells.
 Institution for defectives.
 Imprisonment.
 Penal servitude.
 Capital punishment.

It is possible to give an analysis of the treatment accorded by the Courts to the 4,251 cases whose offences have been analysed above :—

		Per Cent.
	Charge withdrawn or dismissed .	7·53
Without conviction	{ Dismissed	9·9
	{ Recognisances	8·82
	{ Probation	19·27
	{ Institution for defectives	0·49
After conviction	{ Prison	7·17
	{ Police cells	0·89
	{ Fines	43·64
	{ Recognisances	0·7
	{ Borstal Institutions	1·25
	{ Otherwise disposed of	0·24

Comparing this table with the analysis of the treatment of young offenders (p. 36), it will be seen that the tendency of the Adult Courts is to be much sterner. Over a fifth of the convicted cases under

sixteen were dismissed with a caution. Here less than one-tenth. Only 31·59 per cent. of the juveniles were sent to Industrial Schools and Reformatories ; as many as 7·87 per cent. of the " Juvenile-Adults " were sent to prison and Borstal Institutions. The percentages for fines are 35·26 and 43·64 respectively. On the other hand, it is interesting to see that the percentage placed on probation is actually higher among " Juvenile-Adults " ; the respective figures are 16·86 and 19·27.

THE TREATMENT PROPOSED

We should apply generally to " Juvenile-Adults " the same methods as proposed for young offenders, including dismissal after warning for normal first offenders ; " fines " towards costs and restitution, under supervision ; work-centres for those who cannot afford to pay fines ; greatly extended probation ; psychological and sociological examination for serious, abnormal and habitual offenders ; and boarding-out and hostels for those who require transference from bad home conditions and for mentally sub-normal offenders. For those who require institutional treatment, we propose to develop industrial training in Borstal Institutions in place of the Boarding Schools proposed for younger offenders. We need not repeat in detail the suggestions already made, but, before dealing more fully with the cases of imprisonment and Borstal treatment, four points deserve noting.

Transference to Hostels.—The value of the hostel proposal for those who need new surroundings is clearly shown by the Liverpool experience. In 1920, before the hostel was opened, 143 " Juvenile-Adults " were sentenced to imprisonment. In 1925,

after the opening of the hostel, the magistrates felt it necessary to sentence only seven " Juvenile-Adults " to imprisonment. The success of the hostel for boys has led the Liverpool magistrates to decide to open a similar hostel for girls. This example should be followed in suitable centres throughout the country.

Prostitution.—Secondly, when we reach the " Juvenile-Adult " age for offences, we are met with a type of offender which only rarely occurs before sixteen—the professional prostitute. The figures of offences given on page 81 include lads and girls, and, since the number of girls is only one-tenth of the whole, their particular offences find little reflection in the table. But if readers will turn to the table on page 87, they will see analysed the offences of girl prisoners under twenty-one. Here we find that 20 per cent. are definitely classed as prostitutes, whilst there is no doubt that many of those committed for drunkenness and breaches of Police Regulations are also prostitutes. Indeed, at a low estimate, between 30 and 40 per cent. of girl prisoners under twenty-one are prostitutes.

Most of these girls are committed to prison in default of the payment of fines. It is admitted that imprisonment has a deteriorating rather than a reformatory effect. The Departmental Committee on Young Offenders reports that neither fines nor imprisonment are beneficial. The girls are induced to borrow their fines or are brought under the contaminating influences of prison, and generally and progressively they are entangled further in their mode of life :—

" If time is given to pay the fine, the girl resorts to her ordinary mode of life to pay it. If, on the other hand, no time is given, it is

not an uncommon practice for the fine to be paid either at the police court or at the prison by some person who is either living on the earnings of prostitution or whose motives are not inspired by the welfare of the girl.”¹

In blunt words, by a man who is accustomed to pay for sexual relations with her.

This is a difficult problem, which we discuss more fully when dealing with prostitutes of adult age. We are convinced that punitive methods will not solve it, and that reliance must be placed upon preventive and educational measures, whilst the social problems so closely connected with prostitution are steadily dealt with and saner views of sex develop. To arrest the girls whilst leaving free the men who use them is manifestly unjust. We should not proceed against them at all, unless there is definite complaint of annoyance or indecency by persons other than the police. If annoyances or indecencies become habitual, supervision in a hostel and the provision of alternative work is probably the best course. The procuration of girls should, of course, still be dealt with as illegal.

Mentally Sub-normal Cases.—Thirdly, there are many “Juvenile-Adult” offenders both in prison and the Borstal Institutions who, whilst not mentally certifiable, are mentally sub-normal. Borstal cases of this character are at present segregated at Feltham, but the medical officer reported emphatically in 1925 that they ought to be dealt with on different lines in a separate institution where they could receive more individual attention and specialised treatment.² We believe that for most of these cases the hostels we propose for sub-normal offenders would serve.

¹ Report, p. 88.

² Prison Commissioners' Report, 1924-25, p. 56.

They would there be under constant supervision and suitable employment could be sought. Where complete segregation is required, they should be sent to an institution for defectives, and the Mental Deficiency Act should be amended to allow this.

Imprisonment in Default of Fine.—The fourth fact to which special attention should be drawn is the large number of “ Juvenile-Adults ” imprisoned for trivial offences in default of the payment of fines. The sentences are generally too short to allow of any reformative treatment, though long enough to accustom them to prison, and are recognised by everyone to be definitely deteriorative. From 1924–26 the average number of “ Juvenile-Adults ” imprisoned annually for less than one month in default of the payment of fines was 472, or nearly one-fifth of the total number imprisoned. In 1925–26 the “ Juvenile-Adults ” who were imprisoned in default of payment of fines were sentenced as follows :—

		Lads.		Girls.
3 weeks to 1 month	. .	112	..	27
2 „ „ 3 weeks	. .	46	...	8
1 „ „ 2 „	. .	153	...	15
1 week or less	. .	154	...	15
		<hr/>	..	<hr/>
Total	. .	<u>465</u>	...	<u>65</u>

In the case of no fewer than 205 lads and 43 girls *no time had been allowed for the payment of the fine.* It is difficult to find words to characterise the stupidity and cruelty of this course.

The Prison Commissioners remark that “ it is open to question whether a good many of these might not have been dealt with otherwise.”¹ The trivial

¹ Report, 1923–24, p. 15.

nature of the offences is illustrated by this table for 1923-24 :—

	Lads.	Girls.
Drunkenness	57	11
Breach of police regulations	103	33
Railway offences	33	—
Gaming	39	—
Offences against Highway Acts	34	2
Assaults	34	3
Malicious damage	21	—
Prostitution	—	20

The fact that one-third of those sentenced in default subsequently paid their fines and were released indicates that, if supervision had been applied, this proportion, at least, need never have been imprisoned. Under our proposals of supervision, supplemented by Work Centres (residential, if necessary), all of these offenders would be kept out of prison.

“ JUVENILE-ADULTS ” IN PRISON

We now pass to a consideration of the general question of the imprisonment of “ Juvenile-Adults.” First we will state the broad facts.

Number and Age.—The total number of “ Juvenile-Adults ” received annually into prison averaged 3,025 between the years 1920-26 : 2,695 lads and 330 girls. Their ages (1922-26) are indicated in the following percentage table :—

Age.	Lads.	Girls.
16	5·96	3·26
17	11·95	9·0
18	20·71	19·62
19	28·96	30·25
20	32·42	37·87

It will be noticed how the percentage steadily rises with the age, and that the rise is steeper in the case of girls in later years.

Offences Committed.—The chief offences for which

these lads and girls (1922-26) were sentenced were (in percentages) :—

Offence.	Lads.	Girls.
Larceny, burglary, house-keeping, frequenting .	73·45	46·68
Common assaults . .	8·21	—
Breaches of police regulations . . .	5·78	12·2
Indecent assaults . .	5·34	—
Malicious damage . .	3·43	—
Drunkenness . .	3·8	12·09
Prostitution . . .	—	29·03

The very high percentage of acquisitive offences will be noticed, particularly among the lads, and the high figure for prostitution among the girls.

Length of Sentences.—The length of sentences (1922-26) is shown in the following percentage table :—

	7 Days or Less.	7 Days to 1 Month	1 to 3 Months.	3 to 6 Months.	6 to 12 Months.	Over 12 Months.
Lads .	11·72	44·76	29·27	10·84	2·92	0·65
Girls .	10·08	55·12	25·49	7·66	1·55	0·09

The high proportion of admittedly useless short sentences should be noted. Over 56 per cent. of the lads and over 65 per cent. of the girls are sentenced for one month or less.

Recidivism.—The return of previous convictions (1922-26) gives the following table :—

	None.	1.	2.	3.	4.	5.	6-10.	11-20.	Over 20.
Lads	50·17	20·95	10·85	6·96	4·32	2·9	3·56	0·4	0·05
Girls	49·1	22·11	8·31	7·28	4·19	2·57	5·23	1·03	0·17

It will be seen that half of the "Juvenile-Adults" in prison have been previously convicted. The records of Discharged Prisoners' Aid Societies indicate that approximately 5 per cent. of the "Juvenile-Adults" released from prison are convicted within a year, and over 14 per cent. within two years. These figures are incomplete, but they form a sufficient indictment of imprisonment as a means of dealing with adolescent offenders.

EXCLUSION OF "JUVENILE-ADULTS" FROM PRISON

There is now a remarkable unanimity of opinion that prisons have a bad effect upon offenders under twenty-one years of age. The Prison Commissioners have become increasingly uneasy, and in recent years have repeatedly expressed their view that "Juvenile-Adults" should be dealt with differently. In their report for 1923-24, for instance, they remarked :—

"Prisons for adults are not suitable places for the training of young prisoners under twenty-one. Complete separation has never yet been achieved. Despite every care on the part of the staff, opportunities for sight, and even for speech, are bound to occur. We do not, however, merely advocate the opening of separate prisons for boys, a course which has special disadvantages of its own. A different form of training in separate establishments which are not ordinary prisons at all seems to us to be required."¹

The Departmental Committee on Young Offenders was much impressed by the unanimity of opinion on this subject among prison governors, chaplains, medical officers and voluntary workers, and it endorsed the general view in these convincing words :—

"The chief reason why the ordinary prison is unsuitable for these lads and girls is because they are plastic and impressionable. They are at a stage when development is incomplete and is pro-

¹ Report, p. 15.

ceeding rapidly on the emotional side. Temperamental instability is marked. Hopes and fears, affection and anger are quickly roused by the scenes and incidents of daily experience and will result in either social or anti-social impulses. It is the period of temperamental even more than of intellectual development, and it is all important that the objects presented should be such as to direct that development on healthy social lines. It may be that experiences at this period of life have a more permanent effect on conduct than during the earlier years when intellectual progress predominates.

"It is at this stage above all that the lad or girl should be saved from the presentation of the whole picture of prison life and its dreary procession of failures ; and of the building that so soon becomes associated with their presence. Such sights produce their inevitable contamination. Contamination is a subtle thing ; it does not consist only in the communication of coarse expressions or undesirable knowledge. So far as it consists in those, it cannot be escaped ; the daily life of the crowded street, or even of the country village, provides it, and no mere exclusion from prison will serve. But these things alone do not contaminate, if the outlook is healthy and the emotional life is sound. What matters so profoundly is the communication of a wrong outlook on life, cynical, depraved, selfish or all three. That is the real contamination which changes character definitely for the worse, and this perverted attitude towards life and fellow human beings is likely to be absorbed by the impressionable lad or girl from the daily sights of the ordinary prison, even without conversation with adult prisoners, though for that also there are sometimes opportunities.

"In the case of girls the presence in prison of certain types of hardened and depraved women enhances the danger of contamination.

"Prison may pervert qualities admirable in themselves. A notorious criminal excites a kind of hero worship in the lads who see him in the same prison. They quickly discover who he is and feel a certain elation at finding themselves ranked, as it were, with such a celebrity in crime.

"Now with the adventurous lad at the impressionable stage there is seldom a middle course ; he will become a social or an anti-social being ; and in a local prison the adverse influences have too great an advantage, despite the best efforts of the prison officials and voluntary helpers."¹

The Committee considered that imprisonment must be continued for certain cases, but expressed

¹ Report, pp. 80-81.

the hope that "before long some alternative methods may be devised which will avoid altogether the use of prisons for persons under twenty-one."¹ Its proposal to transfer offenders under seventeen to the Children's Courts would actually exclude only 6 per cent. of the lads and 3 per cent. of the girls sentenced to imprisonment, though many of the other reforms which it proposed would, of course, modify the numbers. We believe, if the alternatives we have suggested were applied, the hope of excluding from prison all offenders under twenty-one could be realised. In a sentence, our proposals are that "Juvenile-Adults" on remand should be boarded out or detained at the Psychological Clinics; that short-term prisoners should be placed on probation, "fined" under supervision, employed at work-centres and detained there, if necessary, or otherwise treated as the psychological and sociological examination proved desirable; and that the long-term prisoners should be detained in hostels or sent to a developed Borstal Institution. With Borstal we deal in the next chapter.

There remain two present methods of dealing with "Juvenile-Adults" which require brief consideration—penal servitude and the death penalty.

"JUVENILE-ADULTS" IN PENAL SERVITUDE

There were twenty-one offenders under twenty-one sentenced to penal servitude during 1925-26. The minimum term is three years, which gives more time for remedial treatment than is possible in a local prison where the maximum term is two years. But

¹ Report, p. 82.

the surroundings of a convict prison are fatal to the chances of real reform. The Home Secretary already has power to transfer "Juvenile-Adults" undergoing penal servitude sentences to a Borstal Institution, and the Departmental Committee on Young Offenders recommends that it "should be freely exercised in all suitable cases."¹ The alternatives to imprisonment we have advocated apply equally to these cases, and the practice of sentencing "Juvenile-Adults" to penal servitude should be definitely ended.

DEATH PENALTY ON "JUVENILE-ADULTS"

During the twenty-five years ending 1926, fifty-seven persons under twenty-one were sentenced to death for murder: forty-eight lads and nine girls. The nine girls and twenty-eight of the boys were respited. One of the lads was certified insane and sent to Broadmoor Criminal Lunatic Asylum, and nineteen were executed. We argue the case against capital punishment later; here it need only be urged that, even if the death penalty be justifiable in the case of adults, its application to those who have not reached maturity is indefensible. The Departmental Committee on Young Offenders admits that the age of sixteen is too low as a minimum for capital punishment, and feels that a "higher age would be in accord with the present trend of public opinion."¹ With characteristic timidity it recommends that the age should be increased—by two years!

¹ Report, p. 109.

CHAPTER VIII—THE DEVELOPMENT OF BORSTAL

IF the imprisonment of “ Juvenile-Adults ” is prohibited and the death penalty abolished, it will still be necessary to provide some means of segregating offenders who are a menace to society until they have become fit for ordinary social life. We believe that the Borstal Institutions, despite their defects, indicate the lines on which this should be done. Just as we should convert the Industrial Schools and Reformatories into Boarding Schools for elementary and secondary education, so we should convert the Borstal Institutions into boarding schools for vocational and industrial training.

The receptions into Borstal Institutions from 1914 to 1926 were as follows :—

Annual Average for		Lads.		Girls.
1909-14	. . .	426	...	40
1914-19	. . .	409	...	88
1919-24	. . .	524	...	55
Annually				
1924-25	. . .	504	...	34
1925-26	. . .	535	...	25
1926	. . .	561	...	40

It will be seen that the number of lads has increased considerably, whilst the number of girls has varied from year to year. The average daily population from 1921 to 1925 was 1,019 for lads and 109 for girls.

PENAL INSTITUTIONS

The fundamental defect of the present Borstal Institutions is that they are penal establishments.

The Prevention of Crime Act of 1908 used language which suggested that Borstal was to be retained as a resort for the worst offenders and described the *régime* definitely as "detention under penal discipline." In late years, and particularly since Mr. A. Paterson has been the Commissioner responsible for Borstal, the penal side has been reduced in favour of the educational; but it is not yet by any means eliminated, nor can it be until the Statute providing for these institutions is revised.

The minimum sentence to Borstal is for two years and the maximum for three. Offenders may be released on licence after six months in the case of lads and three months in the case of girls. The licence covers the unexpired period of sentence and one year in addition. The released offender is placed under the supervision of the Borstal Association, and, if the licence is revoked, returns to a Borstal Institution for another year. The normal course at the institution is for two years.

THE ROUTINE

The organisation at Borstal Institutions is based on the House System of the public schools, staffed by a housemaster, an assistant, a principal officer, two house officers, and a matron. A house is intended to contain sixty lads, but at present there is serious overcrowding. In each house there are prefects, selected from the highest grade, with responsibility for good order, the library, games, dinner-table, etc. A senior prefect is chosen house captain.

The routine is very strenuous—perhaps too strenuous. The day of fifteen hours begins with physical training, followed by eight hours' work and ending

with one and a half or two hours' study. The training is either in workshops (wood, metal and minor trades) or in farming or market gardening. The workshop courses are framed to train hand and eye to the use of ordinary tools, including the simpler forms of power machinery. Some lads are unequal to this, and for them unskilled manual work is provided. The evening classes are on the lines of adult education.

The liberty of the Borstal inmate, at first restricted, is gradually increased as he passes through the various grades, until in the Special Grade reliance is placed almost entirely on his honour. Entrance to this grade follows a solemn undertaking to the Governor of personal responsibility for self-control. Thenceforward he moves freely, outside as well as inside the walls. In twenty-four cases Special Grade lads attend municipal technical schools unattended by officers, and in the summer over 300 lads and fifteen girls visit seaside camps for a week.

This reliance on the honour of the inmates has proved thoroughly justified. Of the 300 Special Grade lads at three Borstal Institutions in 1926, any of whom could have absconded, only eleven abused the confidence placed in them. The Governor of Borstal made this comment in his 1925-26 report :—

“ The number of escapes or attempts to escape is twelve. This works out at 2·5 per cent. of the inmates handled, and is, in my judgment, a surprising figure. When we consider that more than 75 per cent. of the inmates work outside the wall in absolutely open, well-wooded country, many of them on ‘ pass ’ and only under the supervision of the principal officer patrolling, the remainder in groups—not very small ones at that—with one officer working with them, there is reason for the opinion that it is a surprisingly good figure.” ¹

¹ Prison Commissioners' Report, p. 52.

POINTS OF CRITICISM

Our criticism of the Borstal method is of how it begins rather than how it ends. Until his case is heard the offender is confined in police cells. For several weeks he is kept in prison between the proceedings at the police court and the Assizes. He is sentenced at the Assizes under formidable circumstances which instil fear. The sentence of "three years' detention" is imposed as a severe punishment and he is sent to another prison for the Borstal "reception class." When he reaches the Borstal Institution, he finds the surroundings prison-like, and he begins his course there under restricted and penal conditions. It is very difficult to win the goodwill of the offender, essential if reform is to occur, under such circumstances.

Emphasising the fact that practically all the attempted "escapes" are made by lower grade lads, the Governor at Borstal remarks:—

"It is hardly to be expected that the class of lad we receive is going to appreciate at once the training of a Borstal Institution. He knows he has been sentenced to Borstal detention for three years, with all the pomp, solemnity, and circumstance of the law. He arrives at Borstal after a few weeks in what is frankly and avowedly a prison."¹

Under the proposals we have outlined above, the offender would not have to undergo the preliminaries of police cells, police court trials, imprisonment on remand, the trial at the Assizes, or the "reception class" at Wandsworth Prison. He would be "boarded out" or retained under non-penal conditions at the Psychological Clinic, and the "Juvenile-Adult" Court would be conducted in a sympathetic atmosphere which would show the offender that the

¹ Prison Commissioners' Report, 1925-26, p. 52.

only object in view was his welfare. The offender would begin his training at the Borstal Institution in a quite different frame of mind.

We welcome the psychological and sociological examination attached to the "reception class" at Wandsworth Prison, and very valuable information should be available when the experiment has continued sufficiently long to justify a report. But the prison surroundings and the actual *régime* to which the lads are subjected make the atmosphere destructively penal and repressive. A voluntary worker informed us that he was badly impressed by the tone in which the officers spoke to the boys at Wandsworth. At the Borstal Institutions many of these men have responded to the different atmosphere. In prison surroundings the old atmosphere remains. We should recruit the Borstal staff from technical schools rather than from the prisons; the habits of years cannot be broken in a day.

Our criticism regarding prison surroundings applies to a large degree to the buildings of the Borstal Institutions. All are old prisons or Industrial Schools. Borstal was once a convict prison, and though the cell blocks and nearly all the other prison buildings have disappeared, it is still excessively institutional. Feltham is an old Industrial School, and the buildings make the House system very difficult. Portland is an old convict prison, and the prison buildings are still used. The Aylesbury Institution for girls includes the old prison for women, and the disused "State Inebriate Reformatory." The fact that the old prison is used for girls "on punishment" adds to its sinister influence. For lads whose licences have been revoked and for those

badly behaved, part of Wormwood Scrubs Prison is used. "The development of Borstal training," reports the Departmental Committee on Young Offenders, "has undoubtedly been handicapped by being started in old prison buildings, though much ingenuity has been exercised in adapting them. None of the present buildings are wholly suitable for the purpose."¹

There is also at present serious overcrowding. The Prison Commissioners reported as follows in 1926 :—

"The numbers at Feltham, Borstal and Portland are so large that it is very difficult for the Governor and House-masters to maintain the personal touch with each lad which is essential to Borstal training. In addition, there is difficulty in finding suitable occupation for all the lads, particularly at Feltham. . . . This need (a new Borstal Institution) has now become acute. A large part of the success of the Borstal system has been due to the individual attention given to the lads by the heads of the institutions, to the corporate spirit created in each institution, and to the arrangements for active and interesting employment. All these methods become less effective if the numbers are too large."²

Such valuable characteristics as the Borstal Institutions now have are seriously threatened by this serious overcrowding, which destroys effective individual influence and vocational training. It is to be hoped that a new institution will be established free from all the taints of prison traditions, and, if the sites of the present institutions are to be maintained, it is imperative that all the old buildings of the prison type should be replaced.

EXPERIMENTS IN SELF-GOVERNMENT

Our belief in the efficacy of greater freedom for offenders whilst under institutional training is borne

¹ Report, p. 95.

² Report, pp. 11 and 12.

out by the success of the Special Grade at Borstal and by experiments made elsewhere, notably at the George Junior Republic, at Freeville, New York. The two main principles of Mr. George's scheme are self-support ("nothing without labour" is the Junior Republic motto) and self-government. His Republic is a sort of model village, whose citizens, aged sixteen to twenty-one (the "Juvenile-Adult" age), appoint their own controlling committees and even their own courts and judges for internal offences. There are five grades through which the inmate must graduate, each one self-governed and occupying a separate part of the village, though there are no enclosures. Admission to a higher grade is gained by the decision of the elected committee. The inmates may have their families with them if they and the families so desire.

In this country there have been two experiments on similar lines. Unfortunately these have been ended, partly for financial and partly for personal reasons, though the principles which they were based upon proved successful in application. One was the Little Commonwealth, Dorsetshire, the other at Sysonby Village Colony, near Melton Mowbray. The story of the Little Commonwealth has often been told. We select the graphic description given by Dr. Cyril Burt :—

"Fresh from a similar experiment in America, the enterprising founder came one day to the Tower Bridge Police Court, in the East of London, to secure the nucleus of his contemplated colony. In the ante-room he passed three girls struggling fiercely with a policeman. One struck the officer a vicious blow with her fist and all were using language far from appropriate to the precincts of a Court. They were systematic shoplifters well known to the police; but so skilful had they been in their transactions that evidence clear enough to convict them was hard to procure.

"Before the magistrate, their posture of defiance was fully maintained. 'Don't be a fool,' cried the biggest to the smallest, who was whimpering; 'stare 'em out.' In spite of the misgivings of the magistrate and of the police, who thought the girls too rough and truculent, all three were secured for the venture. Two constables and a police matron were told off to convey the young colonists safely down to Dorset. Their new patron, however, declined all help; and left the girls to reach the train themselves. As he puts it, 'They did not escape, because there was no one to escape from.' To their new life of liberty they settled down with a will; and hidden virtues quickly came to light. A fortnight later, when the magistrate surprised them by a visit, they bore him off to see their garden, and brought him back again, arm in arm, with flowers in every buttonhole. His first question was, 'Whatever can you have done to make those dreadful, hardened criminals into children so delightfully natural?'

"It was the paradoxical view of the founder that the true secret was to do nothing, to remain passively in the background, trusting to the free untrammelled nature of the child himself, leaving it, without encumbrance or restriction, to work out little by little a spontaneous change of heart. What he aimed at was an insulated community, involving normal family life, youths and girls living in the same home with a grown-up house-mother, working together under the unimpeded operation of practical economic laws, and at liberty to organise whatever form of government might suit their simple ideals. Freedom, not captivity, was the key-note of the place.

"The grounds comprised a farmhouse with its cottages, situated on a 200-acre farm. There came at length to the commonwealth upwards of sixty youthful colonists. The members were encouraged to discuss amongst themselves every problem that arose; and to frame their own decisions. Quite spontaneously, they started legislative meetings of the citizens, and presently set up their own juvenile court, presided over by one of themselves. In this way, 'the tremendous energy of the adolescent, employed formerly to upset law and order, was gradually used in reorganising order and in maintaining law.' When each child is free to exploit his own ideals, whether good or bad, the bad ideals become automatically eliminated, since, being self-contradictory, they can produce no satisfying results. 'By that simple process of elimination'—granted, we must presume, sufficient inborn vigour and intelligence—'the good is left.'"¹

¹ "The Young Delinquent," pp. 237-39.

RESULTS OF BORSTAL TRAINING

Even with the defects of the present Borstal treatment and the bad social conditions to which the inmates return on release, the results are comparatively satisfactory. In 1925 the Prison Commissioners reviewed the after records of the 6,140 lads and the 836 girls discharged since the establishment of the Borstal Institutions in 1910. They showed that 65 per cent. of the lads and 66 per cent. of the girls had not been reconvicted.¹ The Borstal Association adds that, even in the case of those reconvicted, many only suffer one relapse shortly after their discharge ("the first plunge into freedom has been too much") and subsequently remain steady. If these cases are included, it is, in the Association's opinion, true to say that the training is successful with 75 per cent. of the offenders dealt with.² If mentally sub-normal cases were withdrawn from Borstal, the percentage of successes would be still higher.

Part of this success is undoubtedly due to the supervision of the discharged by the Borstal Association,³ whose service in finding employment is specially useful. During 1925, for instance, work was obtained by 508 of the 571 lads and girls discharged. This left 63 unemployed—a remarkably low figure under existing conditions. Full public responsibility must, however, be accepted in this matter. Hostels should be opened where ex-Borstal inmates could be accommodated whilst seeking work and State allowances should be paid during unemploy-

¹ Prison Commissioners' Report, 1924-25, p. 28.

² Report of Departmental Committee on Young Offenders, p. 98.

³ We understand that the after-care of the girls has now been taken over by the head of the Aylesbury Institution.

ment, conditional upon a continuation of industrial training. The hostels should also be available as lodgings after work is found.

If the comprehensive methods outlined in our last chapter were adopted and Borstal Institutions were developed on the lines here proposed, we believe much would be done to prevent the adolescent offenders contributing 39 per cent. to the habitual criminal class.

PART III

THE ADULT OFFENDER

PART III—THE ADULT OFFENDER

CHAPTER IX—INEQUALITY BEFORE THE COURTS

WE begin our consideration of the subject of adult crime by a glance at the offender in court.

The first thing that will impress a visitor to a police court is the fact that the vast majority of prisoners are undefended. The prisoner stands in the dock a lonely, friendless figure, feeling that everyone in the room is his enemy. He cannot separate the police who prosecute him from the police who stand guard at his side, or from the magistrates on the Bench, or the clerk at the table. All represent to him the all-powerful authority with which he has come into conflict. The lawyers belong, in his mind, to the same distant and hostile official world. He feels that every hand is against him.

He is often ignorant and inexperienced. He is pushed about by the attendant police, shouted at and bullied by first one official and then another. The clerk raps out questions at him which his benumbed mind cannot appreciate. The magistrate overawes him so that he is tongue-tied. Before he knows what has happened, he is fined or sentenced to imprisonment. "Justice" is a farce under such conditions.

This description is, of course, not true of all Courts or of all prisoners. There are cases where a magistrate of sympathetic personality is able to overcome the sense of hostility which the atmosphere

inevitably creates. But the conditions are all against this, and it is rarely that human kindness, of the quality of Mr. Clarke Hall, can be found to overcome them. There are cases, too, where an experienced prisoner of the assertive type appears to be as much at home in a police court as in, say, his favourite public-house. But these, too, are the exception.

INADEQUATE PROVISIONS FOR DEFENCE

In the Courts of Summary Jurisdiction (commonly known as police courts), no provision whatsoever is made for the defence of prisoners who cannot afford to employ a solicitor, and it should be remembered that the great majority of prisoners fined and imprisoned are dealt with by such Courts. In the year 1925 (the last for which statistics are available) these Courts imposed fines on 485,688 people, and sentenced 23,223 to imprisonment without the option of a fine. Nearly two-thirds of all the offenders sent to prison are sentenced in police courts.

Many of the fines are small and many of the terms of imprisonment are short ; but police courts have the power to impose heavy penalties, and not infrequently do. They can sentence to imprisonment for periods up to six months or to fines up to £50 (in exceptional cases longer sentences can be imposed, and fines up to £500). And the tendency is to increase the list of offences which may be tried by these courts.

Even in the case of the higher Courts, where the trial is before a jury, the defence of poor prisoners is very inadequate. No prisoner can obtain free legal help unless his defence in the police court has convinced the magistrate that it is in the interests of justice that he should be given this privilege. If he

has made no defence in the police court, or has reserved his defence, he is shut out from assistance in the higher Courts.¹ In practice, the magistrates only grant free defence in exceptional cases.

Moreover, where assistance is given, it is quite disproportionate to the services available to the Crown, with its powerful organisation of legal and police assistance, and its extensive monetary resources. The poor prisoner has no opportunity of obtaining the services of the best solicitor and counsel, and it is not possible, on the costs allowed, for thorough attention to be paid to all the details of his case. Indeed, in protracted cases, no one without large funds at his disposal can venture to contest. Sometimes the costs run to hundreds of pounds, and occasionally to thousands. Those with moderate means, as well as the poor, are prohibited from defence in the face of such costs. A legal system which does not allow equal opportunity for defence to all citizens cannot be described as "justice." It is certain that every year thousands of prisoners are fined and imprisoned whose sentences would be less severe, and sometimes not be imposed at all, if they had adequate defence. Our legal procedure is a luxury of the rich.

An instance of the injustice of the present practice was provided in the recent trial of Mrs. Pace at Gloucester, for murder. The Crown was represented by the Attorney-General and had all the services which the machinery of the law and the

¹ The judge at the Assizes or the chairman of the Quarter Sessions may give a certificate of legal aid after reading the depositions at the police court if he is convinced that the accused has made a good defence and that it is in the interests of justice that a certificate should be granted. A Criminal Court may also order witnesses' expenses up to £20 to be paid, out of Court funds, after hearing a case, but this is of no assistance to a prisoner in the preparation of a case.

police could provide. Mrs. Pace was without resources. Had not Mr. Alfred Purcell, M.P., raised a fund for her defence by public subscription she must have been inadequately represented in a trial where her life was at stake. It is possible that the difference in the legal representation would have made a difference in the verdict reached. The unfairness of the weight of wealth being placed in the balance against poor prisoners in cases such as this is so patent that it is unnecessary to emphasise it.

The truth is that there can be no real equality of legal opportunity whilst the present inequalities of wealth remain. The rich will always be able to purchase more effective defence than the poor. But the fact of this handicap against the poor makes it all the more imperative that the State (if any pretence of justice is to be maintained) should do all that is possible to secure defence for all prisoners in all the Courts. The defence in the Assize Courts and Quarter Sessions should be made more adequate and facilities for defence should be extended to the police courts.

There is a public prosecutor; why not a public defender? Why should there not be attached to every Court a solicitor for the defence, whose services would be available for all prisoners with incomes below a certain level? His name and address should be given on every summons, and it would be his duty to interview every prisoner and take the necessary steps for the defence of those eligible. His salary and costs should be met out of public funds.

If the appointment of solicitors of defence at every Court is regarded as a too costly development for immediate application, there are certain steps making towards equality which need not be delayed.

Courts of Summary Jurisdiction should be given the right to certify for legal aid to poor prisoners equally with Courts of Assize and Quarter Sessions, and this assistance should be available upon the recommendation of a responsible person *before the prisoner is asked to plead*. It should not be withheld at a later stage, even after a plea of guilty.

Appellants from Police Courts to Quarter Sessions should not be required to make a deposit ; Courts of Quarter Sessions should have power to grant legal aid to persons appearing before them on such appeals ; and the present restrictions upon Courts, both of Quarter Sessions and of Assize, in extending assistance should be removed.

The certificate for legal aid should cover a fee to a solicitor, the expenses of witnesses, and also, when the case goes to a higher Court, counsel's fee. This aid should be available to all persons who cannot reasonably afford legal expenditure. We might accept the French formula, which provides for assistance if " a man has not enough to pay for legal aid without entrenching upon the money necessary to the support of his family." Every offender should be informed of the conditions of application for legal aid, which should be stated clearly on every summons. In the case of arrested persons, the information should be given verbally when the charge is made.

Until methods on these lines are adopted, our Courts of Law can never be Courts of Justice. It should be the customary, and not the exceptional, thing for prisoners to be defended. Only then can the proceedings be regarded as approaching impartiality.¹

¹ We do not overlook the fact that an incidental effect of this reform would be to prolong cases. Indeed, even if only one in ten cases were defended, the Courts would be choked with business : a sufficient commen-

THE NEW ATTITUDE IN THE COURTS

But the adequate defence of prisoners is not enough to secure the expression of the new attitude towards crime which we are advocating. A new spirit is required in the police, the legal profession, the jurymen's box, and on the Bench. Whilst the proceedings in the Adult Courts would necessarily be more formal and less paternal, the same spirit of assistance rather than punishment, for which we have pleaded in the Juvenile Courts, should be the dominant note. This change requires a revolution in the attitude towards crime, not only of the police, the legal profession, and the judiciary, but of public opinion generally.

There are, however, certain changes which should be enforced at once. One necessary reform is to end the police practice of examining suspected persons for a prolonged period and of extracting "voluntary" statements from them. The police were given authority during the war under the Defence of the Realm Act Regulations to insist upon any person accompanying them to a police station for examination. This practice has been maintained since the war on a basis supposedly voluntary, but the ordinary man or woman does not venture to challenge the request of the police. The cases of Miss Savidge and of Mrs. Pace are fresh in the public mind, and as we write these words an instance is reported which clearly demonstrates the undesirable attitude of the police.

Ambrose Lightfoot, aged seventeen, a rope-boy, of tary upon the present hasty despatch of "justice." Relief could be given by transferring to the administrative authorities the duty of dealing with technical offences, like those relative to lights on vehicles, identification plates, etc.

Hemsworth, was charged with stealing money, and in a "voluntary" statement confessed to doing so. In the Court he stated that he had been told that if he admitted taking the money he could go home with his parents; if he denied it, he would be locked up. That was why he "confessed," although, in fact, he had not taken the money. The newspaper report continues as follows:—

"Asked if the parents were ordered out of the police station while the lad was questioned, Sergt. Cousins said: 'I asked the parents to go outside because the identification parade was over.'

"Mr Smith: 'Did you say you wanted to talk to the lad?'

"Sergt. Cousins: 'I said I wanted to try to get to the bottom of it.'

"Mr. Gillis, magistrate: 'Why was it necessary to send the parents out? That is most important.'

"Sergt Cousins: 'It is not usual to have a third party present when a person has been detained, and we are trying to probe a case.'"¹

The Bench dismissed the case, evidently believing the boy. But, whether the boy spoke the truth or not, the important point is to note the police attitude, shown in the statement that "it is not usual to have a third party present when . . . we are trying to probe a case." The duty of "probing a case" by examination of the suspected person is not that of the police, but, as Judge Atherley-Jones has insisted, that of the magistrate. When the police feel it necessary to make inquiries, no voluntary statement should be taken except in the presence of a solicitor. If the suspected person is poor, the services of a public solicitor for defence should be made available.

A second essential change is the democratisation of the magistrates' and judicial Benches. At present both largely come from the minority propertied class

¹ The *Daily News and Westminster Gazette*, July 14th, 1928, p. 9.

in the community, and, however conscientious, cannot but subconsciously reflect the traditions and outlook in which they have grown up and lived. They have no experience of the existence of the vast majority of the offenders who come before them in Court. They may seek to be scrupulously impartial, but it is necessarily difficult for them to understand the mind and circumstances of those whom they are judging.

If the first purpose of Courts is to be to assist offenders to lead an honest and decent life, this understanding is essential. It is, therefore, important that steps should be taken (perhaps by a scholarship system to meet the costs of training) to enable men and women of the working class to enter the legal profession, from which the judges and stipendiary magistrates are recruited, and to secure that the magistracy shall accurately reflect the community. Working-class magistrates are now more common, but their number must be greatly increased if the Bench is to be fully democratised.

We recognise that the mere widening of the character of the Bench and the legal profession will not secure the new attitude and spirit we desire. The penal view is at present held among all classes, and much education will be necessary before it is changed. When at last we have a Government which decides to treat crime scientifically, it will require to exert constant influence on the police and the Bench to secure the thorough adoption of the new principle of curative treatment.

Many alternatives to imprisonment are already employed; to them we refer later. First we will look at the prison population.

CHAPTER X—WHO GO TO PRISON ?

THE supreme stupidity of the Prison System lies in the fact that it takes criminals of every type and treats them in the same way. It matters not whether a man is a thief, a drunkard, a child assaulter, a political offender, a debtor, a forger, a bigamist, or is guilty of manslaughter. In all essentials they are dealt with alike ; they are locked up in their cells for sixteen hours a day, made to fulfil a regulation labour task, and denied social intercourse. They have sinned against the laws of the State and must receive the prescribed punishment which the State has decreed for all offenders.

This is an easy and simple way of dealing with the problem of crime. It requires little thought or initiative. Everything works to pattern. A man is sentenced, he is transferred to the prison in a Black Maria, a receipt is given for his body, he is numbered and allotted to a cell, and henceforth everything goes like clockwork until the day of his release. If the prisoner should refuse to go like clockwork, there are regulation medicines and punishments. The Governor and his staff are not in charge of a human institution. They are in charge of a machine.

So long as punishment is the motive of penal treatment, nothing can be more admirable. It works smoothly and effectively. The system assumes that all human beings are equally responsible for their

acts, have equal opportunities, and, having deliberately offended against the laws of the State, must undergo punishment at its hands. It is undisguised retribution.

Whilst this crude, punitive conception of the treatment of crime remains the basis of our penal system, no reforms can be of much value. The Prison Commissioners have in recent years been revising their penal theories so that reform begins to occupy a place in their minds more prominent than punishment. They have consequently sought to make imprisonment more humane. But they have failed in their purpose because the prison system itself is founded on the punitive principle.

If reform is to become the principal object, the prison system must be scrapped altogether. The mechanical treatment of crime must give way to the psychological and sociological. The emotional motive of punishment must give way to the scientific motive of seeking out the individual and social causes of crime and removing them.

A CRIMINAL TYPE ?

In approaching the problem of crime from this new standpoint, we must first make some examination of the prison population and discover what kind of people they are. There used to be a theory of a criminal type. Cesare Lombroso, the Italian criminologist, even went so far as to say "that literally from top to toe in every organ and structure of his body, from the quality of his hair, at the one extreme, to the deformity of his feet, at the other, the criminal is beset with definite morbid and physical stigmata." If this theory were true, it would destroy the case

for punishment, but it would also justify the treatment of criminals as a special class in the community and would destroy the hopes of the reformists.

Lombroso's theory has, however, been shattered by the late Dr. Goring, of the English prison service, who, after a detailed examination of 3,000 convicts, positively asserts that "the physical and mental constitution of both criminal and law-abiding persons of the same age, stature, class and intelligence are identical." We must start, therefore, by realising that criminals are ordinary men and women, with similar characteristics to men and women we meet in everyday life. Physically and mentally they are of a lower standard than the average citizen, as one would expect; but there are thousands of men and women outside prison of similar physique and intelligence.

POVERTY OF THE PRISON POPULATION

The second generalisation which can be made is that the prison population is, as we have already seen, largely drawn from the poorest classes. "Prisons are largely peopled," writes Dr. Smalley,¹ late medical inspector of prisons, "by the very poor, the very ignorant, the physical and mental weaklings, the unemployable, and the unskilled, to say nothing of the drunkards. . . . Time and opportunity count much in the production of the crime. Possibly in the case of many who take special credit to themselves for not having departed from the paths of rectitude, it is only owing to their being more happily

¹ Prison Commissioners' Report, 1908-9, p. 35.

circumstanced and without adequate temptation." This is an indication of the social factor in the causation of crime.

With these two broad generalisations in mind—the comparative normality of prisoners and their poverty—we must continue our consideration of the appropriate remedial treatment by asking certain specific questions: (1) What is the number of prisoners? (2) What are the proportions of the two sexes? (3) For what crimes are people imprisoned? (4) Are there differences in the crimes of the two sexes? (5) What are the motives of the crimes? (6) What proportion of the prisoners are habituals? (7) How far are prisoners mentally defective? (8) What are the ages of the prisoners? The nature of the necessary treatment will depend upon the answers to these questions.

The Number of Prisoners.—The average daily population of the local and convict prisons combined is about 10,000. One-tenth of the prisoners are women. The following table shows the average population during the years 1921-27:—

LOCAL PRISONS.			CONVICT PRISONS			TOTALS.		
Men.	Women.	Total.	Men.	Women	Total.	Men.	Women	Both.
7,562	882	8,444	1,436	62	1,498	8,998	944	9,942

The Crimes Committed.—An analysis of the prison receptions for the years 1922-26 shows that the crimes which they committed can be classified broadly as follows:—

OFFENCES.	PERCENTAGES.		
	Men.	Women.	Total.
1. Larceny, false pretences, burglary, housebreaking, forgery, etc.	42.05	16.19	36.98
2. Sexual offences (including sexual assaults, bigamy, indecent exposure, brothel-keeping, prostitution)	4.84	19.32	7.68
3. Offences against the person (including assault, wounding, and cruelty to children)	10.41	5.29	9.41
4. Malicious damage to property	2.31	1.18	2.09
5. Drunkenness	21.48	47.67	26.62
6 Vagrancy	14.58	2.59	12.22
7. Offences against regulations	4.31	7.75	4.99

The first feature of this table which will strike the reader is the difference in the crimes of male and female prisoners. The majority of the women prisoners are prostitutes—probably 60 per cent. Prostitutes compose a large part of those sentenced for drunkenness and breach of police regulations, and practically all those sentenced for sexual offences.

A second feature of the table is the small percentage of crime against the person—only one in ten in the case of men, and one in twenty in the case of women. Drunkenness occupies a high place in both lists—over one-fifth of the men and nearly one-half of the women. About one-seventh of the men's offences are connected with vagrancy—begging, offences against the Poor Law, sleeping out. The offences against property (categories 1 and 4)—often due to poverty—are high.

The Motives of the Crimes.—To tabulate the motives expressed in crime is more difficult, and the following table can only represent a rough analysis :—

MOTIVE.	PERCENTAGES.		
	Men	Women.	Total.
Acquisitive	60·64	19 58	53·37
Malicious	12·22	6·47	11·58
Sexual	4·88	26·26	8·2
Drunkenness	21·65	47·64	26·79

We have used “acquisitiveness” to cover all crimes for personal material gain, though some of these are committed to secure the first needs of life. We have even included “sleeping out,” on the ground that the vagrant is getting sleeping accommodation for nothing! On the other hand, we have left the sexual offences of women under that head, though most of them are probably “acquisitive” rather than sexual in motive. The “malicious” offences include those with malicious intent, whether against property or person.

Proportion of Habitual Offenders.—The figures regarding habitual offenders have already been given. It will be remembered that they show that in 1926 64 per cent. of the male prisoners and 87 per cent. of the female prisoners had been previously convicted; 6·56 per cent. of the male prisoners and 32·2 per cent. of the female prisoners had been previously convicted more than twenty times.¹ The proportion of professional thieves among these habi-

¹ Prison Commissioners' Report, 1926. See fuller table on p. 128.

tual offenders is not large—probably not more than 10 per cent. The successive convictions of the remainder is due to initial weakness (physical or mental), leading to repetitions of the offence and, still more, to absence of a fair opportunity to make good by honest ways of living.

Proportion of Mentally Deficient Prisoners.—It is difficult to estimate the proportion of mentally deficient prisoners. Sir Bryan Donkin, late Medical Commissioner, put the figure as high as 20 per cent. Dr. Goring's estimate was from 10 to 20 per cent.; but both these views are now considered to be exaggerated. The Mental Deficiency Act (1913) only deals with congenital cases, with the result that in every large prison there are men who are obviously deficient, but who, unless they become dangerously violent, cannot be transferred to an asylum because their insanity is not congenital. In addition to those actually deficient, there is a large number who are weak-minded and whose offences are due to incapacity to earn a livelihood or to some mental abnormality. If we place 15 per cent. of prisoners within this wider category of mental weakness, deficiency, or abnormality, we shall certainly not be over-estimating.

The Age of Prisoners.—Lastly, we must have in mind the ages of prisoners. The returns for the years 1922-26 show :—

	Under 21.	21-30.	31-40.	41-50.	51-60.	60 and over.
Men .	8.06	28.8	25.69	19.42	10.82	7.42
Women	3.1	21.45	29.79	27.71	12.73	5.22
Total .	7.13	27.39	26.46	21.01	11.19	6.8

It will be noticed that the highest decade for men is twenty-one to thirty, and for women thirty to forty. Considerably more women between forty-one and fifty are imprisoned than between twenty-one and thirty. This surprising fact is probably due to the high recidivism among women and the greater ability of women prostitutes under thirty to pay the fines imposed. It is distressing to think that nearly 7 per cent. of those in prison are over sixty. They are almost entirely habitual offenders, many are feeble-minded and frequently their offences are trivial.

Having made this preliminary examination of the prison population, we will discuss the effects of imprisonment and then consider in turn how we could deal remedially with the different types.

CHAPTER XI—THE EFFECTS OF IMPRISONMENT

IN primitive society, before the elaboration of a system of law, the individual took his own revenge. As codes of law were framed, the liberty of the individual to punish was restricted, and the responsibility placed upon the community. The earlier forms of communal punishment were simple, if severe. They were practically limited to death, torture, and banishment. Death was inflicted for theft as late as 1810. When the public conscience became more sensitive, other methods of punishment, not so crudely physical, had to be found.

The method of confinement was already used for debtors, with the object, not so much of punishment as of holding them in ransom until their friends met their obligations. When it became necessary to replace the older forms of punishment, a system of confinement which was definitely penal had to be devised. The direct infliction of physical hurt being ruled out, the authorities fell back upon the infliction of pain through close confinement and the deprivation of all social activities. Prisoners were locked in small bare cells, for periods as long as six months, for twenty-three hours out of each twenty-four; they were not permitted to speak; they were put to useless and degrading work; they were clothed humiliatingly; they were cut off from their friends; they were given distasteful and meagre diet. All that makes life human was denied them.

Curiously enough, the penal reformers combined with the penal inflictors to evolve this system. They were shocked by the promiscuous herding together of men and women of all types under the unregulated conditions of the debtors' "lock-ups," and therefore advocated separate confinement and the imposition of silence. They did not realise that, if the former method led to mental contamination, the latter would lead as surely to mental deterioration.

THE RECENT REFORMS

The strict confinement first imposed has been progressively modified during the last hundred years. The experience of the deterioration it caused, as well as humanitarian considerations, impelled a revision. The present Prison Commissioners have, to all intents and purposes, thrown over entirely the penal theory upon which the modern prison system is based. In their Report for 1925-26 they say :—

"Prisons exist to protect society, and they can only give efficient protection in one of two ways, either (a) by removing the anti-social person from the community altogether or for a very long period; or (b) by bringing about some change in him. Any general application of the first method would not be supported by public opinion. The prison administration must therefore do its utmost to apply the second; that is to say, to restore the man who has been imprisoned to ordinary standards of citizenship, so far as this can be done within the limits of his sentence. Unless some use can be made of the period of imprisonment to change the anti-social outlook of the offender and to bring him into a more healthy frame of mind towards his fellow-citizens, he will, on leaving the prison gates after a few weeks or months, again become a danger, or at any rate, a nuisance. He may, indeed, be worse than before, if the only result has been to add a vindictive desire for revenge on society to the selfish carelessness of the rights of others which he brought into prison with him.

"The change can be, and is, effected in a good many cases by vigorous industrial, mental, and moral teaching, pursued on considered lines by officers, teachers and prison visitors of character and personality. The effect of such training, properly conducted, is to induce self-respect, to lessen self-conceit (characteristic of many prisoners on first reception) and to arouse some sense of personal responsibility. Failures there are, and always will be, but the records of successes justify the system and the efforts of those who work to carry it out."¹

They have sought to express this view in a series of reforms aimed at lessening the humiliation of prison conditions and extending social and mental activities. We know that they have been sincere in their intentions and that they would have gone much farther and faster in a progressive direction if the funds had been available. But in actual fact, the reforms have meant much less in practice than they appear to mean on paper.

The most important of the reforms has been the extension of educational classes. A magnificent service is rendered by voluntary teachers in all parts of the country, and the Prison Commissioners, with their limited resources, are to be congratulated upon what they have achieved. At some prisons, practically all prisoners attend classes, but dependence upon volunteers means that in others only a limited number can participate, whilst, in a few, no classes at all can be organised. Evidence which we have collected from ex-prisoners discharged between 1924-27 shows that in three out of twelve prisons no classes at all had been introduced; among the three is Dartmoor Convict Prison, where the danger of mental deterioration through long sentences is specially serious.

In addition to this important educational reform,

¹ Prison Commissioners' Report, 1925-26, pp. 17 and 18.

there have been many minor ameliorations, like the abolition of the broad arrows on clothing, permission to use safety razors for shaving, the substitution of enamel for tin utensils, an improvement in the conditions under which friends' visits take place, and the extension of one hour's exercise to men confined to cells on punishment. These reforms are being introduced very slowly, and some of them are only partially realised; but, even if they were fully applied, whilst they would ease a little the hard experience of prisoners, they would do nothing to change the prison system fundamentally from a punitive to a reformatory basis.

The Prison Commissioners claim that the rigours of cellular confinement have been lessened. The recent evidence we have obtained shows that sixteen and a half hours of the twenty-four are still spent in the cells. Until 1926, at least, hard labour prisoners were kept in their cells for twenty-three out of the twenty-four hours during their first fortnight in prison. Upon this subject of cellular confinement, a prisoner who was confined in two prisons during 1926 writes:—

“While awaiting trial, at Shepton Mallet, I was ‘celled’ all day, except for one hour’s exercise in the morning and thirty minutes (if fine) in the afternoon, with the door closed and a defunct ventilator. On Wednesday, divine service (one hour) and on Sundays, service and exercise, from 10.30 to 12 and from 2.30 to 3.30, proved a little relief from the monotony of solitary confinement. At Winchester we were ‘celled’ for dinner from 12 to 1.30, and from 5 p.m. till 7 a.m. next day. This solitary confinement is the backbone of the prison system and the cause of many suicides and much mental deterioration and moral degradation. A lad committed suicide at Winchester, and one tried it at Shepton Mallet, whilst one or two went crazy. Solitary confinement was the cause of the tragedy in each case. Believe me, sir, it is the greatest conceivable crime on any human

soul to confine him in a cell, without any associate, a cell about 9 ft. by 12 ft., with no light save a pigmy paned window. The gas is often defective, and sometimes prisoners cannot even see to read. Week-ends (blessed of the free) are the curse of the prisoner, who, save at Chapel and exercise, sees no fellow-being from Saturday mid-day to Monday morning. Holidays are worse—the men are ‘celled’ throughout the day, save for the hour’s exercise.”

PHYSICAL EFFECTS OF IMPRISONMENT

One would expect that confinement under the conditions of prison existence would cause both mental and physical deterioration. The prison medical officers claim, however, that physical health actually improves, and, in the majority of cases, it probably does. This is not so much a tribute to the healthy character of imprisonment as an indictment of the unhealthy social conditions from which most prisoners come. The assured diet of prison (even if it be a minimum) is a great advance upon the uncertain and inadequate diet of the unskilled worker. The regular and “dry” life of prison is more healthy than the undisciplined existence of casual labour and the drink-shop. The cell, cramped though it is, is more healthy than the room, or two rooms, into which the entire family of a low-waged working-man must crowd. It is not surprising, therefore, that most men are healthier when they leave prison than when they enter. But the minority of prisoners who come from comfortable and healthy circumstances almost invariably suffer physically from prison confinement.

MENTAL EFFECTS OF IMPRISONMENT

When we consider the effect of imprisonment upon mental health, all the evidence indicates that it is bad. The total effect of the *régime* is to crush the

personality. Indeed, the ideal prisoner is the man who has no personality : the prisoner who is content to become a mere cog in the prison machine ; whose mind is so dull that he does not feel the hardship of separate confinement ; who has nothing to say to his fellows ; who has no desires, except to feed and sleep ; who shirks responsibility for his own existence and consequently is quite ready to live at others' orders, performing the allotted task, marching here and there as commanded, shutting the door of his cell upon his own confinement as required. In every prison there are weak-minded or no-minded creatures of this nature. In them, perhaps, there is no mental deterioration ; prison suits them exactly and, on discharge, they quickly return, because they are wholly unfitted to live in the outside world.

But among others mental deterioration is inevitable. It may take the form of falling gradually to the level of prison existence, which means that the prisoner approximates to the type of ideal no-minded prisoner which we have described. His mental powers go, his memory weakens, he loses all desire to think or act for himself, his nature is animalised. He becomes a good prisoner and a bad citizen.

On the other hand, the prisoner may be of the sensitive type, in constant conflict with the conditions around him. The persistent suppression and his reaction to it create neurasthenia. When exercising or working with other prisoners, he may succeed in evading the silence rule, without being detected or reported, but there is no means of escaping the long hours of cellular confinement and, sooner or later, he is almost certain to lose his hold upon himself in one form or another—cursing his

officer, attempting to bang down the door of his cell with his fists, or smashing the windows and furniture. Punishment by still stricter confinement and bread and water diet will follow, and then, perhaps, the padded cell and observation. The process will sometimes continue to the point of insanity.

Even where mental balance does not completely disappear, a permanent condition of resentment and neurasthenia develops. When at last the prisoner is released, he goes out into the world with his hand against every man, and, it may be, with his nerve system shattered.

The prison population is so small compared with the general population that too much importance must not be attached to comparative statistics, but the figures regarding insanity and suicide are so striking that their significance cannot be ignored. The respective rates for the years 1921-26 are as follow :—

INSANITY RATE.

Among general population . . .	33·13 per 10,000
Among prison population . . .	110·1 „ „

SUICIDE RATE.

Among general population . . .	0·9 per 10,000
Among prison population . . .	6·07 „ „

That the excessive insanity rate is due to prison conditions is indicated by the fact that the medical officers transfer to the appropriate institutions all certifiable cases on entry, and that the rate of insanity increases with the period of imprisonment.

High as is the suicide rate, the reports of the Prison Commissioners show that there are *ten* attempted suicides for every *one* achieved. The

medical officers record that at least half of the attempts are genuine.

These terrible figures are in themselves a dramatic proof of the mental deterioration resulting from imprisonment. A system which drives men to insanity and suicide ought not to be tolerated by any community which regards itself as civilised.

FAILURE OF THE SYSTEM

Finally, it can be stated definitely that the prison system fails in its objective. It may punish, but of what value is punishment when it makes men worse instead of better, when it causes mental and moral deterioration? That the prison system does not deter prisoners from a life of crime is indisputably demonstrated by the following percentages of the prisoners from 1921-26 who had been previously convicted :—

	Previously Convicted.	Over 5 times.	Over 10 times.	Over 20 times.
Men . . .	61·92	23·5	18·34	6·56
Women . . .	83·8	54·88	44·13	32·2

Every department of State, except the Prison Department of the Home Office, is judged on its results. If any other department reported that its methods led to a failure so colossal as these figures prove, new methods would be demanded at once. Is it not time that we demanded new methods in our treatment of crime?

CHAPTER XII—THE ALTERNATIVES TO IMPRISONMENT

WE begin the consideration of alternatives to the prison system with encouragement from the experience of the last fifty years. In 1876-77, when prison administration was first centralised, the daily average population of English prisons was 30,000. Before the war it was 17,000. At the present time it is 9,508, and this figure is augmented by the considerable number due to the extensive unemployment and the intensified poverty consequent upon trade depression. It is doubtful whether the number would be more than 8,000 under normal industrial circumstances.

These decreases in the prison population are the result of the progressive development of alternative methods of dealing with crime. The exclusion from prison of juvenile offenders under the age of sixteen, the establishment of Borstal Institutions, the increased use of fines, the adoption of the method of probation, and the increased use of bail for remanded prisoners are the main causes of the fall. In advocating alternatives to imprisonment, therefore, we are not urging something untried. We are urging the planned and scientific direction of a process which force of circumstances has already set in motion in a rather haphazard way.

Evidence of the tendency towards alternative methods is seen in the progressive closing down of

prisons. In 1914 there were fifty-seven local prisons in use. Now there are only thirty-two. There were so few prisoners in many of the prisons that between 1922 and 1926 it became necessary to close ten, for reasons both of economy and efficiency. In certain cases the disused prisons have been utilised to provide accommodation for ordinary families; but the buildings are so hideous and depressing that the sooner they are pulled down the better.

ALTERNATIVES NOW IN OPERATION

The degree to which other methods than imprisonment are used is shown in this analysis of the treatment of convicted offenders in police and Assize Courts in 1925 :—

Bound over without supervision	17,306
Bound over with supervision under probation	15,064
Borstal	322
Fined (paid without imprisonment)	478,783
Discharged with warning	52,210
Imprisonment in default of fine	14,542
Imprisonment without option of fine	27,268
Penal servitude	459
Death	30
Otherwise disposed of	4,499

The number of offenders imprisoned was only 6·8 of the total. The problem of finding alternatives to imprisonment is, therefore, of comparatively small dimensions.

We think it will be clear from our treatment of the problem of juvenile offences that our object is not merely the negative one of desiring to save offenders from the deteriorating effects of imprisonment. It is the positive object of seeking the appropriate remedial treatment for each type of offender. Many of the methods which we have advocated for juvenile

offenders are applicable to adult offenders. We shall only deal here with alternative and supplementary methods when they are necessary, or with facts particularly relevant to adults.

PRISONERS AWAITING TRIAL

When a suspected offender is charged and it is necessary to retain him in custody, it will probably not be possible or desirable to board him out as proposed with normal juvenile offenders. In certain cases it may be necessary to retain him for a night or two at a police station, but there is no reason why the conditions of confinement should be so excessively penal as they are now. The offender should not be regarded as guilty before trial. There is need of improvement, particularly in the conditions under which women are detained at many police stations. Whenever possible, offenders who are normal should be transferred to hostels. Serious, habitual, or obviously abnormal offenders should be detained for examination at the Psychological Clinic, as suggested in the case of juveniles.

The hostels might also be used as remand homes for prisoners whom it is necessary to keep in custody whilst on remand or awaiting trial. It is absolutely unjustifiable that they should be detained under the penal conditions of imprisonment. Moreover, it is impossible for them, under the inevitable limitations of prison conditions, to prepare their defence as adequately as they could under freer circumstances.

The Courts now allow bail far more frequently, and there has been a steady decrease in the number of prisoners on remand, from 11,158 in 1923-24 to 5,429 in 1926. The Prison Commissioners have

more than once expressed the view that it is regrettable that so many persons on remand should receive the stigma of imprisonment and have urged the establishment of Remand Homes.¹ Many prison governors have complained of the complicated nature of the arrangements for bail.

In 1921 a committee reported to the Lord Chancellor and the Home Secretary on the subject of the detention in custody of prisoners committed for trial. It gave returns showing that 96 prisoners in 1919, 97 prisoners in 1920, and 56 prisoners in 1921, who were subsequently *acquitted*, were kept in prison for more than eight weeks awaiting trial. There were five cases during these years where prisoners afterwards acquitted were imprisoned twenty weeks and over, before trial by the Assizes. The committee recommended arrangements by which trial would be accelerated, and these have mostly been put into operation.²

MENTALLY SUBNORMAL PRISONERS

We suggest arrangements for psychological and sociological examination similar to those outlined in the case of Juvenile Offenders. It would be desirable to have separate accommodation for adults both at the Psychological Clinics and at the Residential Psychological Centres. The absence of psychological examination means that many mentally subnormal offenders are now sent to prison. Those who are certifiable under the Mental Deficiency and Lunacy Acts are transferred to homes and asylums, but the insistence upon congenital or early defect

¹ Report, 1922-23, p. 13.

² Report of the Committee on the Detention in Custody of Prisoners Committed for Trial.

means that many who ought to be removed are left in prison. There is also a group of feeble-minded and border-line cases who should never be in prison, but for whom no alternative provision is now made. Upon these the Medical Commissioner reported as follows in 1926 :—

“ There remains a residue of persons who though not certifiable under either Act are in medical opinion in an unsuitable environment in prisons. These people form a subnormal group and include the simple feeble-minded and those of border-line intelligence whose offences are due to their low intelligence and high suggestibility and who are relatively incapable of social rehabilitation on account of their low mentality.

“ This condition of feeble-mindedness, though not sufficient to warrant certification under either the Lunacy or Mental Deficiency Acts, is a very marked condition and includes cases of mental deficiency of congenital origin with or without epilepsy ; imperfectly developed states of insanity ; mental weakness after an attack of insanity ; senility ; weak-mindedness due to alcoholic excess ; and weak-mindedness of undefined origin.” ¹

Such cases are now transferred to special prisons and receive special treatment, but it is a scandal that they should be in prison at all. The psychological examination which we have proposed would ensure discovery of their condition before sentence and enable different and suitable treatment to be given. Many of these offenders could live useful lives under a little supervision. In some cases it might be possible to place them under the care of guardians whilst treatment was given ; in other cases, they could be accommodated in hostels, where they might live whilst continuing to earn a livelihood ; in some, a segregated life in institutions would be necessary. There are hundreds of such cases where proper supervision would prevent serious offences being committed.

¹ Prison Commissioners' Report, 1926, p. 18.

IMPRISONMENT IN DEFAULT OF FINE

It will be seen from the table on p. 130 that by far the greatest number of convicted persons are fined, and this seems the most suitable treatment for slight and "accidental" offences where something more than a warning is desirable and where the offence is not occasioned by poverty. We repeat, however, the desirability of making clear that the fine is a legitimate contribution towards the costs of judicial administration rather than a punishment. It is important, if the new attitude towards crime is to find full expression, that the penal atmosphere should be wholly removed from the Courts. We should also make a much fuller use of the powers to demand restitution for thefts or damage. This is the most reasonably just of all sentences for normal offenders of this type where poverty is not the cause of the offence.

Nearly 15,000 offenders are still imprisoned annually in default of the payment of fines. They number, indeed, about one-third of the total prison receptions. The fact that a fine was imposed in the first instance indicates that the magistrates did not consider that imprisonment was suitable treatment. Much greater facilities are now allowed for the payment of fines, as is indicated by the reduction in the number of those imprisoned in default from 83,855 in 1899 to 14,542 in 1925. But steps should be taken to exclude these offenders from prison altogether. The sentences are short and admittedly useless. In 1926 no less than 12,765 sentences were served for less than two weeks. Of these, 5,979 were actually for less than a week.

The Prison Commissioners have repeatedly insisted

on the futility and definite harmfulness of these short-term sentences. In their Report for 1925-26, for instance, they wrote :—

“ The short sentence remains an outstanding defect in our penal system and difficulty in prison administration . . . The highest administrative and judicial authorities have taken the same view, and have drawn attention to the uselessness of the short sentence. The International Penitentiary Congress in August, 1925, passed a resolution to the same effect. There is no doubt that the prospect of prison has a strong deterrent effect on those who have never yet passed its gates ; nor that once the disgrace of imprisonment has been incurred, much of that effect has been lost. It can also be readily understood what an impediment to the development of a sound system of prison training is the presence of a number of men who only come in for a few days, and cannot therefore be taught any work other than the simplest.”¹

Short sentences are not only bad ; they are stupidly wasteful. The Governor of Wandsworth Prison points out that the cost of imprisonment is probably ten times as much as the value of the fines imposed :—

“ Attention is again called to the uselessness and heavy public expense incurred in sending men to prison for five or seven days in lieu of a fine of a few shillings, for being drunk, etc. During the past year no less than 866 such cases were received. The total sum in fines would probably not amount to more than £500, and the expense incurred would no doubt be ten times that amount, without any punitive or reformatory effect whatever being produced. Cases have come to my notice of men being committed, serving a few days' sentence and again being committed for a similar offence within seven or eight days. All the incidental expenses of arrest, prosecution, conveyance to prison, etc., being carried out twice within seven or eight days—the alternative being two small fines. The remedy, to my mind, is a more liberal use of a probationary system and very much longer sentences in the case of those who are sent to prison.”²

We believe that the solution of this difficulty is supervision under probation until the fine is paid. Where the money is not available the proposal of

¹ Report, p. 10.

² Prison Commissioners' Report, 1923-24, pp. 61-2.

work-centres made in the case of juvenile offenders should be put into operation, with the power of detention, if necessary. But in all this consideration of fines, the point which we have previously emphasised of the difficulty of poverty must be borne in mind. A community which is itself morally guilty of robbery by accepting the services of a man without ensuring him a living wage, or which denies him the right to serve by failing to provide useful employment, has no justifiable authority to demand that he shall refrain from robbery. It must remove the beam in its own eye if it is to claim the right to concern itself about the mote in the eye of the petty thief.

IMPRISONMENT FOR DEBT

Debtors should be employed and detained, if necessary, at the work-centres, but should be released on licence if openings giving promise of fuller restitution were available outside. Debtors form about one-fourth of the prison receptions. The figures on p. 4 show that many are the victims of unemployment. These should be given an opportunity to earn what they owe. Others are of a worse type; those who refuse to obey maintenance orders, for example. The work-centres would be a means of making them fulfill their obligations.

THE DEVELOPMENT OF PROBATION

Probation is often regarded as a means of treating juvenile offenders, but it is of the highest importance in dealing with adult offenders also. During 1925, 15,064 offenders were placed on probation with supervision. Despite this comparatively high figure, there is no doubt that many offenders are still sent

to prison who could be treated beneficially by the method of probation. For instance, in the same year, 13,165 first offenders were sentenced to imprisonment without the option of a fine and 13,448 offenders were sentenced to imprisonment for terms of four weeks or less. A large proportion of these first offenders and short-sentence prisoners would have been suitable cases for probation. As the probation system develops, it should be the means, with the other alternatives we have indicated, of keeping all minor offenders out of prison.

IMPRISONMENT FOR DRUNKENNESS

Nearly half the women and more than one-fifth of the men who enter prison are sentenced for drunkenness, or, rather, failure to pay fines imposed for this offence. Prison medical officers sometimes say that the prison *régime* is a fitting treatment for such cases; the simple diet, the regular life, the absence of excitement, and the inability to obtain alcohol are good for the man or woman who has a tendency to over-drink. But if the actual *régime* is beneficial, the associations are the reverse. The degradation of the prison "taint" and the contact with criminals are liable to make the accidental drunkard into a confirmed drunkard, and to encourage a gradual deterioration into a life of crime in other respects. Imprisoned drunkards, among men, are almost entirely from the poorest classes; the majority of women drunkards are prostitutes. They either have not the money to pay the fines imposed, or deliberately choose to undergo a short sentence rather than pay. They soon become accustomed to the short periods of imprisonment and accept them as a matter of course. They deteriorate into the criminal class.

From the point of view both of the individual and of society it would be better to keep these offenders out of prison altogether. Greater opportunities should be given for the payment of fines, and, if the fines are not paid, equivalent work should be demanded on the lines already suggested. In the case of habitual drunkards power should be given to send them for a period, following a medical report, to an Inebriate Institution.

Habitual drunkards should be subjects for the mental and sociological examination we have proposed. The sociological examination would undoubtedly show that drunkenness is frequently the result of overcrowding, squalid conditions, monotony of existence, and easy facilities for drinking, without alternative opportunities for relief and stimulation. The ultimate solution will be found in better social conditions, education, and restrictions upon the sale of liquor. Meanwhile, we should make the best of a bad job by refraining from persisting in penal methods which tend still further to degrade these offenders.

THE PROBLEM OF PROSTITUTION

The problem of prostitution must be solved outside the penal system. The women are generally fined £5 or, alternatively, sentenced to fourteen days' imprisonment. They accept the imprisonment as part of their profession. Sometimes men will pay the fine and release them ; often the women will serve the full fourteen days and then go back to their calling. The futility of this treatment is not denied. It is doubtful whether a single woman has been deterred from prostitution by the fear or

experience of imprisonment; yet, as has been pointed out, this stupid method is responsible for probably 60 per cent. of the female population in prison.

Experience proves that the present method does nothing to clear the streets of women of this class. Our conclusion is that we must reply upon moral education, an improvement in the economic status of women, and broader views of the whole sex problem. The sexual relations of adults should be removed entirely from the penal code, except that open indecency, persistent annoyance, procuration, and living on the earnings of prostitutes should remain illegal offences. The injustice of sentencing the women and leaving the men for the most part free is evident, for it is the man who is in reality the "sexual offender"; the concern of the woman is to gain a livelihood. If the prostitutes walking our streets are a danger, that must be overcome, so far as is possible, by the better sexual education of youth and the inculcation of a moral standard which will regard the purchase of sexual relationships as revolting to manhood.

OTHER SEXUAL OFFENCES

Sexual offences by adults upon young persons and children come within a different category. In such circumstances it is the obvious duty of society to intervene. These cases should always be the subject of examination. Again, it will often be found that overcrowding is an important factor. In the majority of cases, some mental abnormality will be revealed. Segregation may be necessary, but it should be enforced in institutions with a deliberately

remedial objective, and not under the penal conditions of imprisonment.

THE PROBLEM OF VAGRANCY

A further section of offenders which should find no place in prison are those sentenced under the vagrancy laws. These laws are often harsh ; and tramps, as a class, are frequently hunted down shamefully by the police. In the country districts, if a theft takes place, suspicion almost invariably falls, in the first instance, upon the tramps passing through the neighbourhood. The problem is, of course, in large part bound up with the economic conditions of the working class. When unemployment is severe, vagrancy increases ; during the war, when work and high wages were obtainable, vagrancy almost ceased to exist. The community should provide facilities for men on the road in search of work. The casual wards in the workhouses are often little better than prison.

But apart from economic conditions, there are certain types, such as gypsies, who prefer the life of vagrancy to fixed habitation. That in itself is not a crime, and an honest livelihood may be earned on the road. Society has the right to insist that the children shall not be neglected and shall be properly educated, but it would be wise to provide legitimate facilities for those who prefer this form of existence rather than to treat them as parasites. Where offences, such as thefts, are committed, they should be treated accordingly ; but we must get out of the habit of thinking that vagrancy in itself is a crime, or even a potentiality towards crime.

THE "HABITUALS" WHO ARE LEFT

When we have dealt with the various classes of offenders in these ways, we shall have kept out of prison probably nine-tenths of those who now enter. We shall be left with a residuum of about a thousand habitual offenders, both professional burglars and those who repeatedly commit small offences such as petty larcenies. If, after examination, there seemed to be no other means of dealing with these repeated offenders, they would have to be segregated from the community and, if necessary, for long periods. The sentences should either be indeterminate or with a minimum of five years, and should be followed by a period on licence.

But this segregation should be definitely planned on a reformatory basis. It should take the form of a self-contained community rather than a prison. The object should be to convert bad citizens into good citizens, and the best means of achieving this would be by the development of a community consciousness expressed through self-government.

These colonies should be conducted on the lines of the George Junior Republic, already described, though we should not go so far as to say that enclosures would not be necessary for habitual offenders. The conditions should approximate as much as possible to those outside, with workshops, stores (for wages should be paid), adult education, sports, a library, and social life generally. In view of the long period of segregation proposed, we should permit the families of well-conducted prisoners to join the colony, though it would be desirable that children, except for occasional visits, when their influence would be good, should be boarded out. We are

confident that this scheme would not, in practice, prove so Utopian as it sounds. The mentally abnormal offender would be treated otherwise on the lines we have proposed, and the habituals who remained would be of the type which would make the best of the circumstances. There would be no likelihood of the conditions, however satisfactory, encouraging the continuance of crime. Segregation for an indeterminate or long sentence would be too serious a restriction of liberty even under the best conditions. It might prove hopeless to reform the older men ; it would probably be best to separate them, and, unless there were definite indications of a changed attitude of mind, to keep them permanently under conditions similar to preventive detention. The directing Boards of the institution should have the power, on the advice of the superintendent and medical officer, to release even such cases on licence.

AFTER DISCHARGE

Finally, the community must recognise its responsibility to all these offenders when they return to the ordinary round of life. Work under suitable conditions must be provided. All that we have said in this respect regarding Juvenile Offenders applies with scarcely less force to adults. It is useless to expect a man to live honourably unless he is given an opportunity to earn an honourable livelihood. We should like to see the ex-offenders developing their own Welfare League for their mutual assistance. A society to help the discharged so manned would be far more effective than the present philanthropic societies. Self-respect and self-reliance, within a community anxious to give him a chance, is the way of rehabilitation for the ex-offender.

CHAPTER XIII—THE DEATH PENALTY AND ITS ALTERNATIVE

WE now turn to the most extreme penalty imposed by the English law—the death penalty for the crime of murder.¹ Is it justifiable? If not, what is the alternative?

The death penalty is defended on two grounds: first, as an act of justice—a life has been taken and, therefore, a life must be forfeited; second, as a safeguard to society—potential murderers must be deterred by fear of the consequences of their meditated action.

DOES THE DEATH PENALTY DETER?

We have already stated the case against the principles of retribution and deterrence which are expressed in these justifications of the death penalty. We do not propose to repeat the general argument against the former: it is a theoretical justification and the case against it applies equally to murder as to lesser crimes. But the second is a practical justification and demands a practical reply. If it be true that the execution of a murderer protects the community from further murders, the theoretical case for the abolition of the death penalty will, with most people, count for little.

The first point to notice is that the deterrent justification of the death penalty was previously used to defend its imposition for many kinds of crime. It is estimated that in the reign of Henry VIII. 72,000

¹ The death penalty is still enforceable, also, for high treason, piracy with violence, setting fire to arsenals, dockyards, etc.

executions took place, some of them as punishment for offences which would now be dismissed with a fine.¹ In 1780, the summit of severity, there were over 200 capital crimes, including poaching, or associating with gypsies for a month. In 1831 a boy of thirteen was hanged at Maidstone. Two years later a boy of nine stole some children's paints, valued at 2*d.*, from a broken shop window in London, and was duly sentenced to be "hanged by the neck until he is dead," though he was subsequently reprieved.

The use of the death penalty for such trivial offences was invariably defended on the ground of "protecting society." When, in 1810, a proposal was made in the House of Lords to abolish capital punishment for shoplifting to the value of 5*s.*, Lord Ellenborough, the Chief Justice, used these formidable words :—

"I trust that your Lordships will pause before you assent to an experiment pregnant with danger to the security of property, and before you repeal a statute which has so long been held necessary for public security. I am convinced with the rest of the judges, public expediency requires there should be no remission of the terror denounced against this description of offenders. Such will be the consequence of the repeal of this statute that I am certain depredations to an unlimited extent would be immediately committed."

The Lord Chief Justice was so apprehensive of the effects of the proposal that he intervened a second time in the debate to exclaim :—

"My Lords, if we suffer this Bill to pass, we shall not know where to stand : we shall not know whether we are upon our heads or our feet. Repeal this law and see the contrast—no man can trust himself for an hour out of doors without the most

¹ It is best to state at once that practically all the facts contained in this chapter are taken from Mr. Roy Calvert's "*Capital Punishment in the Twentieth Century*" (Putnam's, 5*s.*). We have rarely read a more convincing book. Mr. Calvert, as a result of detailed investigation, marshals a mass of facts which seem to us to be unanswerable.

alarming apprehensions that, on his return, every vestige of his property will be swept off by the hardened robber."

The offences for which the death penalty could be imposed were progressively decreased, without, of course, any of the dire results which Lord Ellenborough and his judicial colleagues prophesied. Between 1830 and 1840 capital punishment was repealed for cattle stealing, larceny, forgery, postal thefts, and dwelling-house burglaries, and an official return showed that the number of such crimes during the three years prior to the last execution was actually greater than during the three succeeding years.¹

WHERE THE DEATH PENALTY IS ABOLISHED

It is argued, however, that experience of the abolition of the death penalty in the case of less serious offences cannot be accepted as relevant to cases of murder. Fortunately, we are also able to cite extended experience in the case of murder itself. Capital punishment for murder has been abolished in twelve European countries, in most of the Cantons of Switzerland, in nine South American countries, in eight States of the American Union, and in one Australian State.² In his book, "Capital Punishment in the Twentieth Century," Mr. Roy Calvert has made a careful examination of the effects of the repeal of the death penalty in these countries. The conclusion of his survey of the official returns is "that in no single instance is there evidence of a

¹ The figures were 7,497 and 6,620 respectively.

² The full list of the countries is as follows: Austria, Belgium, Czecho-Slovakia (Government has introduced Bill), Denmark, Holland, Finland, Lithuania (though capital punishment is frequently imposed under martial law), Norway, Portugal, Roumania, Sweden, Switzerland (most cantons), Argentine, Brazil, Colombia, Costa Rica, Ecuador, Honduras, Italy (except for political attempts against Signor Mussolini and the King), Peru, Uruguay, Venezuela, U.S.A. (8 States), and Queensland.

permanent increase in homicidal crime as a result of abolition; in many there has been a decided decrease. The experience of these countries indicates that the death penalty cannot be a necessary deterrent.”¹

The following are instances of homicidal rates in six European countries before and after the abolition of the death penalty:—

Belgium (no executions since 1863). In the three years preceding the last execution there were 64 committals for murder; in the three succeeding years, 51.

Denmark (no executions since 1892). In the ten years ending 1890, the convictions for murder and manslaughter, or attempts at such, numbered 0.42 per 100,000 of the population. Between 1891 and 1900, they numbered 0.28 per 100,000 of the population. (There are no figures available for the years exactly preceding and succeeding 1892.)

Holland (capital punishment abolished 1870). During the twenty years preceding and succeeding 1870 the rate for murder and attempted murder remained at 0.09 per 100,000 of the population.

Norway (last death sentence 1875). During the fifteen years preceding the disuse of capital punishment, the sentences for murder averaged 2.7 annually. During the succeeding twenty-seven years they averaged 2.4 annually.

Sweden (last execution 1910). The rate of murders and of attempted murders was 0.07 during the five years both preceding and succeeding the disuse of capital punishment.

The case of Switzerland is particularly interesting

because we can take the evidence from abolition and non-abolition cantons side by side. The tables of the homicidal rates per 100,000 of the population are as follows :—

	In 10 Non-abolition Cantons	In 15 Abolition Cantons.
1881-1890 . . .	0·25	0·28
1891-1900 . . .	0·23	0·24
1901-1910 . . .	0·24	0·18
1911-1920 . . .	0·15	0·16

It will be seen that in most of these European countries the homicidal rate shows little change before and after the abolition of the death penalty. On the whole, there is a decrease following the abolition.

It is desirable to include some reference to the French experience, in view of the wide publicity which has been given to certain expressions of opinion by Lord Justice Darling. In his "Musings on Murder,"¹ he made the very definite assertion :—

"M. Grevy, when president of France, commuted every sentence of death, with the result that murders multiplied beyond measure and it was made most difficult to revert to the former salutary practice."

One would assume that anyone who had held the responsible position of Lord Darling, when dealing with an issue of life and death, would verify his facts. He has quite failed to do so. Lord Darling states, first, that M. Grevy "commuted every sentence of death." The fact is that *there was not a single year of M. Grevy's Presidency without executions*. He states, second, that "murders multiplied beyond measure." The fact is that *the number of cases of homicide during the nine years of his office were 145 less than during the preceding nine*

¹ P. 11.

years. Mr. Calvert gives detailed tables proving this to be the case.

The experience of the United States of America is important. A table giving the homicidal rate in the 26 States during the eight years 1912-19 shows that an abolition State—Maine—had the least deaths by violence. Its homicidal rate was 1.8. Four of the next seven States were abolition States: the homicidal rates in this group were all below 3.75. One abolition State—Kansas—showed up comparatively badly in the sixteenth position with a rate of 6.7, but the eight States at the bottom of the list, with rates varying from 7 to 12.9, were all death penalty States.¹

This evidence—European and American alike—completely destroys the “deterrent” justification of the death penalty.

We do not claim that it provides conclusive proof that the abolition of the death penalty decreases the likelihood of murder. Although most of the abolition territories show a decrease in murder, the change in the homicidal rate is comparatively small, and other factors may have contributed. *But the general experience that there has been no increase in murders, following the abolition of the death penalty justifies the definite conclusion that capital punishment does not have a deterrent effect.*²

¹ This comparison is admittedly not entirely fair, since the character of the population (those with large coloured and of alien elements) determines the high homicidal rates in many of the States. But a comparison of five abolition and five non-abolition States of similar populations, in the years 1914-21, gives a homicidal rate of 3.8 for the former against 5.6 for the latter.

² There is one incidental effect of the death penalty which seems to encourage the committal of murder. There is evidence that the morbid public interest in murder trials, arising largely from the uncertainty of the prisoner's fate, actually impresses certain minds in the direction of murder.

CONCLUSIONS FROM PSYCHOLOGY

The conclusion from the actual facts of experience confirms the theoretical conclusions to which most psychologists would come. Approaching the question from this standpoint, we should not expect the thought of the possible punishment to influence a potential murderer. Most murders are committed under the influence of a violent passion. A Report issued by the Home Office in 1905 showed that by far the greatest proportion of murders occur under conditions which preclude any real consideration of consequences. An analysis shows that drink, quarrels, and violent rage account for 29 per cent., and jealousy, intrigues and revenge for over 30 per cent. The motive of sexual passion is frequent: two out of every three persons murdered are women, and, of the women murdered, 42 per cent. are the wives of the murderers, and a further 38 per cent. are their mistresses. This type of crime is not likely to be deterred by a cool consideration of the consequences.¹

EFFECT ON THE EXECUTIONERS

There is a final argument against the death penalty which its advocates must face. The execution itself is an act so demoralising to all who are concerned in it—the executioner, the Governor, the doctor, the chaplain and the warders—that the community has no right to demand it of them.

“ I have never seen anyone who had anything to

¹ Less than 10 per cent. of the murders which occur have mercenary motives. Many of these are undoubtedly premeditated and cold-blooded. But the murderer who plans his crime carefully, also plans to avoid detection, and it is characteristic of this type of criminal that he should be confident of his ability to evade discovery.

do with the death penalty who was not the worse for it," says Dr. James Devon, of the Scottish Prison Commission. He continues :—

"As for the doctor who must be in attendance, it is an outrage on all his professional as well as his personal feelings. . . . There has never (for very many years) been any pretence that the executioner's occupation is not a degrading one."¹

"If only the advocates of capital punishment had to carry it out," the Governor of one of our largest prisons exclaimed the day following a recent execution, "they would soon change their opinion."²

The author of this book has been in prison on three occasions when executions have taken place. The demoralising effect upon both the officers and the prisoners was painfully evident. The following note was made in Liverpool Prison, in 1918 :—

"A principal warder told me what a strain it is to have to attend executions of men who have been under his charge for many weeks, men whom he has got to know well. 'For many nights before and after the execution I cannot sleep,' he said. 'Before it comes, every time I see the man, or think of him, the thought of what I shall have to do at the execution strikes me. I see him hanging there, whilst I hastily undo the buttons of his jacket and pull open his shirt for the doctor to listen to his heart. After it has taken place, I cannot shake the memory of the scene from me. You see, I have sometimes been in daily contact with the man a month or more, and often he has bared his soul to me. Many of these men have occupied quite a warm place in my heart.'"

It is a big responsibility to force such duties upon anyone.

THE ALTERNATIVES

If capital punishment is to be abolished, what is the alternative? When a murderer is reprieved the common practice is to inflict penal servitude for

¹ "The Criminal and the Community," pp. 169-171.

"Capital Punishment in the Twentieth Century," p. 100.

life. That is an alternative scarcely less cruel than death itself. The community which keeps a man twelve or fifteen years at Dartmoor Convict Prison is destroying his mind and killing his soul.

With murder, as with other crimes, we must put aside all thoughts of punishment, all emotion of revenge. The community must confine itself to the two objects already urged as the only justifiable motives in dealing with the criminal: (a) the protection of society, and (b) the rehabilitation of the individual. It is obviously necessary to segregate individuals who have a dangerous tendency towards violence, and, if necessary, they should be confined for life. But there is no reason why the segregation should be under penal conditions, the effect of which is to cause still further deterioration. The definite aim should be to seek out the causes of the tendency towards violence, and to seek by appropriate treatment to remove them.

The first steps should be the psychological examination and the investigation of the environmental circumstances which we suggest for other serious offences. Mental abnormality would be found frequently, and an effort should be made to cure it by psychological treatment. Cases of insanity would be taken to Broadmoor Asylum,¹ with an augmented staff of competent psychologists, capable of giving curative treatment. Cases of mental deficiency, both congenital and acquired, and borderline cases, would be treated in appropriate institutions. Cases of more normal mentality would be placed with the residuum of habitual offenders, and

¹ It is to be hoped that the contradictory title "Criminal Lunatic" Asylum would be dropped; if a man is a lunatic he cannot be regarded as a criminal.

would only be liberated with extreme care, after a prolonged period when proof had been given of reformed character, and when an opening promising a fair chance in life had been found. The licence system might be used in order that a watch could be kept for a time on their subsequent behaviour, and conditions might be imposed on their liberty, such as refraining from intoxicants or from contact with old haunts and associates.

THE RESPONSIBILITY OF SOCIETY

The sociological examination into the past environment of those who commit murder would strengthen the case, which we have again and again emphasised, that society shares with the individual a large part of the responsibility for crime. "To what classes do those convicted of murder belong?" asks the Home Office Report on the causes of murder, 1886-1905. This is its own reply:—

"The answer must be that a large proportion are of the poorer classes. The majority of murders appear to be committed in densely populated urban districts, seaports, manufacturing towns and mining districts. London, Lancashire, Warwick, Stafford and Durham are the counties in which they are most numerous; the large number of cases in the mining and coal shipping district of the last named county is very marked."¹

The crime of murder is not most common among the poor because the poor are by nature specially vicious. They are not, as thousands would testify. It is commonest among the poor because the poor are condemned to exist in inhuman conditions which encourage viciousness. We remind ourselves of Dr. Devon's words: "Everybody can see that a man

¹ Criminal Statistics, 1905.

may be tempted to steal if he is destitute, but those who have never felt the pinch of poverty . . . can hardly imagine how men are embittered, and goaded into acts of brutality." The irritations and repressions of overcrowding, the disappointments and bitterness of prolonged unemployment, the gnawing discontent of low wages, the hundreds of limitations upon existence under conditions of extreme poverty—these create the domestic quarrels, the bouts of over-drinking, and the outbursts of violence, which are so often the occasion of murder. Sir John MacDonell concludes his editorial survey of the Home Office Report with these words:—

"I am inclined to think that this crime (murder) is not generally the crime of the so-called criminal classes, but is in most cases rather an incident in miserable lives in which disputes, quarrels, angry words, and blows are common. The short history of the large number of murder cases which have been examined might be summed up thus:—Domestic quarrels and brawls; much previous ill-treatment; drinking, fighting blows; a long course of brutality and continued absence of self-restraint. This crime is generally the last of a series of acts of violence."¹

Read these words with the "densely populated" districts of the "poorer classes" in mind; it is in these, we are told, that most murders are committed. Can anyone doubt that the brutalising conditions under which society condemns these "poorer classes" to exist from childhood upwards are largely responsible for the deformed and degraded lives which Sir John MacDonell depicts? Society is the criminal before the murderer commits his crime. Even to the murderer, therefore, society cannot afford to adopt an attitude of moral superiority.

¹ *Ibid.*, 1905.

CHAPTER XIV—A LAST WORD

DURING twenty-eight months I experienced the English prison system under the worst conditions ; that experience made me feel that my first duty was to expose its cruelty for the sake of those still in prison. As joint secretary with Stephen Hobhouse of the Prison System Enquiry Committee, I was able to do something, but I remained unsatisfied. The work of the Committee was, in a sense, destructive. It sought to give an accurate and detailed description of the prison system and its effects ; but it made no attempt to outline constructive alternatives. That seemed to me the next thing necessary. For many years it has been my intention to present these alternatives, but pressure of work has prevented more than the collection of material and the making of a few notes.

This book has been mainly written during a voyage to and from India. It has been difficult, riding over the wide seas, to visualise the problem of crime—the wretched social conditions out of which it so largely arises ; the stuffy, terrifying police courts ; the ugliness of the prison yard ; the gallows ; the desperate struggle for existence of the discharged prisoner.

To-day, as I write these words, we are driving through the Red Sea in the face of a north wind. I look as far as the eye can travel over a blue and

silver ocean ; the breeze is clean and invigorating, the breath of God ; the sky is cloudless ; the sun makes the world a shining glory. Yesterday we glided below the rocky coast west of Aden, the sea an emerald green, the mountains rising sheer from the yellow sand, superb in their rugged outline against the sky, immense, eternal. To-morrow we shall begin the passage of the Suez Canal, with the desert stretching east and west to the horizon. I saw it in the moonlight when we came, glistening like snow until it met the stars.

A prison cell is seven feet by ten. I defy any man, with imagination enough to realise what existence in that tomb is like—shut in it sixteen out of twenty-four hours, for weeks, for months, for years—I defy him to sit here on this deck with me and gaze across these great expanses of beauty and then in his heart condemn the worst criminal to that living death.

By chance it has happened that since my voyage out I have spent three months in an Indian hospital. A visitor asked me one day whether I preferred hospital or prison. I hesitated : it was during a period of pain. But looking back upon this experience as a whole there is no doubt about the answer. Hospital represents the best in human endeavour : prison the worst.

There were nearly 600 patients in the hospital—Indians, Anglo-Indians, Europeans. There were only beds for 520, but suffering could not be turned away unattended. Those who needed comfort least lay on mats on the floor until the beds were vacant. An army of ward boys, nurses, students and doctors staffed the hospital. They went about their work with the one object of easing pain, of mending broken

limbs, of curing disease. It was an inspiration to watch them and think of the service they were doing.

I compared their task with that of a prison staff: the maintenance of a cruel discipline which makes human beings worse instead of better. *When shall we begin to treat mental and moral ill-health as we treat physical ill-health?*

SUMMARY OF CONCLUSIONS

GENERAL PRINCIPLES

CRIME is largely the result of poverty and an anti-social economic system, for which the community, and not the particular individual, is responsible.

The criminal code does not justly reflect anti-social conduct. The poor man who steals is imprisoned. The profiteer who underpays his workers or overcharges the public is often regarded as a pillar of society.

With the removal of social injustice and the establishment of social co-operation, the greatest proportion of crime would disappear.

Meanwhile, motives of revenge, retribution, deterrence, and punishment should be eliminated from the treatment of law-breakers. Moral ill-health should be dealt with as physical or mental ill-health—first, curative treatment of the individual; second, removal of the social causes of crime; third, isolation of the individual until he ceases to be dangerous to society.

THE JUVENILE OFFENDER

Fifty-three per cent. of habitual offenders are first convicted before the age of sixteen. The curative treatment of juvenile offenders is therefore specially important.

The causes of juvenile offences are rarely hereditary, and even in such cases can often be cured.

The Juvenile Courts.—Juvenile Courts should be transferred to the Education authorities, since curative treatment could be carried out most effectively under the direction of School Psychologists, with the aid of teachers and Care Committee members, or in educational establishments.

Juvenile Courts should be separated from the ordinary Courts—either in distinct buildings or at the offices of the Education authorities.

The charge should be made at the Juvenile Court or before a member of the School Management Committee, and not at the police station. Where it is necessary to keep suspected offenders in custody, they should be boarded out with suitable families or,

if observation is necessary, at the in-patients' department of a psychological clinic.

The magistrates for Juvenile Courts should be selected by the Education authorities. Not more than two magistrates should be present in Court.

The Court procedure should be simplified. It should embody the principle of consultation for the best curative treatment rather than punishment.

Treatment Proposed.—Psychological examination should precede the decision as to treatment in cases of serious or repeated offences, or where there is abnormality or the environmental conditions are bad. Every Education authority should employ a psychologist.

Psychological clinics should be established in reach of every Court, supplemented by a limited number of residential psychological centres for more prolonged observation when necessary.

First offenders of petty misdemeanours should be warned. Where more than a warning is necessary, Probation should be used in normal cases, but not where there is abnormality or home conditions are bad, unless, in the latter case, the offender is removed to a hostel or placed under a foster-parent.

The staff of Probation officers should be increased (and supplemented by voluntary workers) to ensure personal attention. No religious tests for officers should be permitted, and the public should bear the full cost.

Fines should be imposed only as a contribution towards the costs of administration, or as restitution for thefts or damages. They should not be imposed where poverty has occasioned the crime.

Work-centres should be established at which fines could be earned. They should include a non-penal residential department where, if necessary, offenders or their parents could be detained until the fine is earned.

Whipping should be abolished. It creates an attitude either of revenge or humiliation. Both are fatal to character building.

The power to transfer an offender to the care of a relative or other fit guardian should be used where parental influence is bad. Where necessary, guardianship should be vested in the Education authority, which should compile a list of suitable foster parents. Maintenance grants should be paid.

"Places of detention" should be abolished.

Mental Deficiency.—There should be thorough school examination for mental deficiency, and adequate provision of Special Schools. Half the estimated cases are now undetected, and only one-fifth attend Special Schools.

The provision for institutional treatment is inadequate. Despite the incomplete diagnosis, there is no provision for over 2,000 cases annually. The institutions should be transferred from private to public control and should be extended to meet the needs.

Psychological examination before Court decisions would ensure proper treatment of mentally defective offenders—either attendance at a special school; additional home care through school nurses, welfare workers, or Care Committee officials; transference to suitable foster-parent or hostel; or institutional treatment.

Boarding Schools.—The Industrial and Reformatory Schools (as well as Poor Law Schools) should be brought under the Education authorities and should be converted into boarding schools for elementary and secondary education for children requiring institutional treatment. There should be different *régimes* for different types of children. The maximum of freedom and self-government should be allowed.

The community must accept responsibility for the provision of suitable employment with adequate wages after school age. Hostels should be provided for those without suitable home accommodation, and industrial training until employment is found.

Adolescent Offenders.—New courts should be established for "Juvenile adults" (16 to 21). They, too, should be under the Education authorities, but the magistrates should be appointed by the Juvenile Unemployment Advisory Committees, since industrial training and employment are the main consideration.

All offenders under twenty-one should be excluded from prison. Capital punishment should be abolished.

Treatment should be on lines similar to that proposed for juveniles, except that Borstal industrial training would replace the elementary and secondary boarding schools. The penal features of Borstal training should be eliminated, freedom and self-government extended, accommodation increased, and the old prison buildings now used replaced. A new institution should be opened for mentally weak and abnormal adolescent offenders.

The State should accept responsibility for the provision of suitable employment, with hostel accommodation if necessary, when the period of training ends.

THE ADULT OFFENDER

The vast majority of offenders are now undefended in the Courts, and the high costs are a severe handicap against the poor.

A public solicitor for the defence should be attached to every

Court, and his services should be available without charge whenever a defendant is without means. Provision should be made for the free services of counsel in the higher Courts. Appellants from Police Courts to Quarter Sessions should not be required to pay deposits.

The police should be prohibited from examining suspected persons except in the presence of a solicitor.

The Bench and legal professions should be democratised by the appointment of men and women of working-class experience to the former, and the provision of scholarships to facilitate a wider field of recruitment for the latter.

Prisoners and Prisons.—Lombroso's "criminal type" is a myth. Physically and mentally, law-breakers are of a lower standard than the average citizen, but thousands of the law-abiding are of similar physique and intelligence.

Imprisonment has a deteriorative effect. Self-reliance is lost, personality is suppressed, memory deteriorates. The prison insanity rate is three times higher than outside, and the suicide rate six times higher.

The recent "reforms," whilst easing the hardships of some prisoners, do not change the punitive and repressive character of the *régime*. For example, prisoners are still confined to their cells for sixteen and a half hours of the twenty-four.

The failure of the prison system is shown by the fact that 62 per cent. of the men and 83 per cent. of the women have been previously convicted; 7 per cent. of the men and 32 per cent. of the women have been previously convicted twenty times.

The Prison Commissioners have admitted that imprisonment has no reformatory effect upon the greater part of the prison population—the professional or habitual offender, the young prisoner, the short sentence prisoner, the vagrant, the inebriate, and the feeble-minded. These cover practically every class, except the first offenders of the "accidental" type, who obviously would be better outside prison.

Alternatives to Imprisonment.—To abolish the prison system is not Utopian. The daily average prison population has fallen from 30,000 to 10,000 during the last fifty years. This is due to the provision of alternatives. The need now is for a planned and scientific direction of this process.

Suspected offenders should not be imprisoned before trial and verdict. When it is necessary to retain them in custody, they should be accommodated in hostels or, where desirable, in the in-patients' department of a psychological clinic.

Psychological examination would reveal the mentally sub-normal offenders, many of whom are now imprisoned. Some could be placed under guardianship whilst treatment was given;

others could be kept under supervision in hostels, whilst earning a living ; some would require to be transferred to institutions.

Probation should be more extensively used for adults in suitable cases, particularly for the first and petty offenders.

One-third of those who enter prison are imprisoned in default of payment of fines. Adequate opportunity should be given for payment, by instalments and under supervision, if necessary. Fines ought not to be imposed where poverty is the cause of the offence.

Work-centres should be established (where work now done in prison could be done) for those unable to meet their fines. There should be power to detain offenders at these centres if necessary.

Nearly half the women and more than one-fifth of the men are imprisoned for failure to pay fines for drunkenness. The procedure described above should be applied to them. Habitual drunkards should be detailed at inebriate homes.

Debtors should be employed and detained, if necessary, at the work centres, but should be released on licence if openings outside, giving promise for fuller restitution, were available.

Sixty per cent. of the women in prison are prostitutes. The sexual relations of adults should be removed from the penal code, except in cases of open indecency, persistent annoyance, procuration, and living on the earnings of prostitutes.

Sexual offences by adults upon young persons and children should remain illegal. In the majority of cases, abnormality would be revealed by examination. Segregation with treatment would often be required. Overcrowding is an important factor.

Vagrancy should not be regarded as illegal, and facilities should be provided for those " on the road." Where offences are committed, they should be dealt with as in other cases.

The Residuum.—When these alternatives have been applied, there would be a residuum of about 1,000 professional and habitual offenders. They should be given either indeterminate or long sentences in self-contained communities, with the maximum of self-government. Power should be given to release them on licence. Most of the aged might have to be detained permanently under conditions similar to preventive detention.

Society must accept responsibility for the provision of honourable employment to all discharged offenders. Ex-offenders should have their own Welfare League for mutual assistance.

The Death Penalty.—Capital punishment should be abolished. The experience of countries where it has been abolished proves that it has no deterrent effect, and we have no right to call upon anyone to carry out the inhuman process of execution.

Mental examination should determine treatment. Individuals with a dangerous tendency towards violence should be segregated and only released on licence with extreme care.

Even in the case of murder the community must not forget its responsibility. Murder most commonly occurs in overcrowded areas. Society is the criminal before the murderer commits his crime.

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